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United States  
Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.

JOSEPH S. GUERIN, RAYBURN B. GUERIN  
and ED. R. GUERIN, Individually and as Co-  
partners, Doing Business as R. B. GUERIN &  
COMPANY, General Contractors,  
Respondents.

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Transcript of Record

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Petition for Enforcement of Order of the  
National Labor Relations Board

FILED



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United States  
Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

EDWARD S. GUERIN, RAYBURN B. GUERIN  
EDWARD R. GUERIN, Individually and as Co-  
partners, Doing Business as R. B. GUERIN &  
COMPANY, General Contractors,

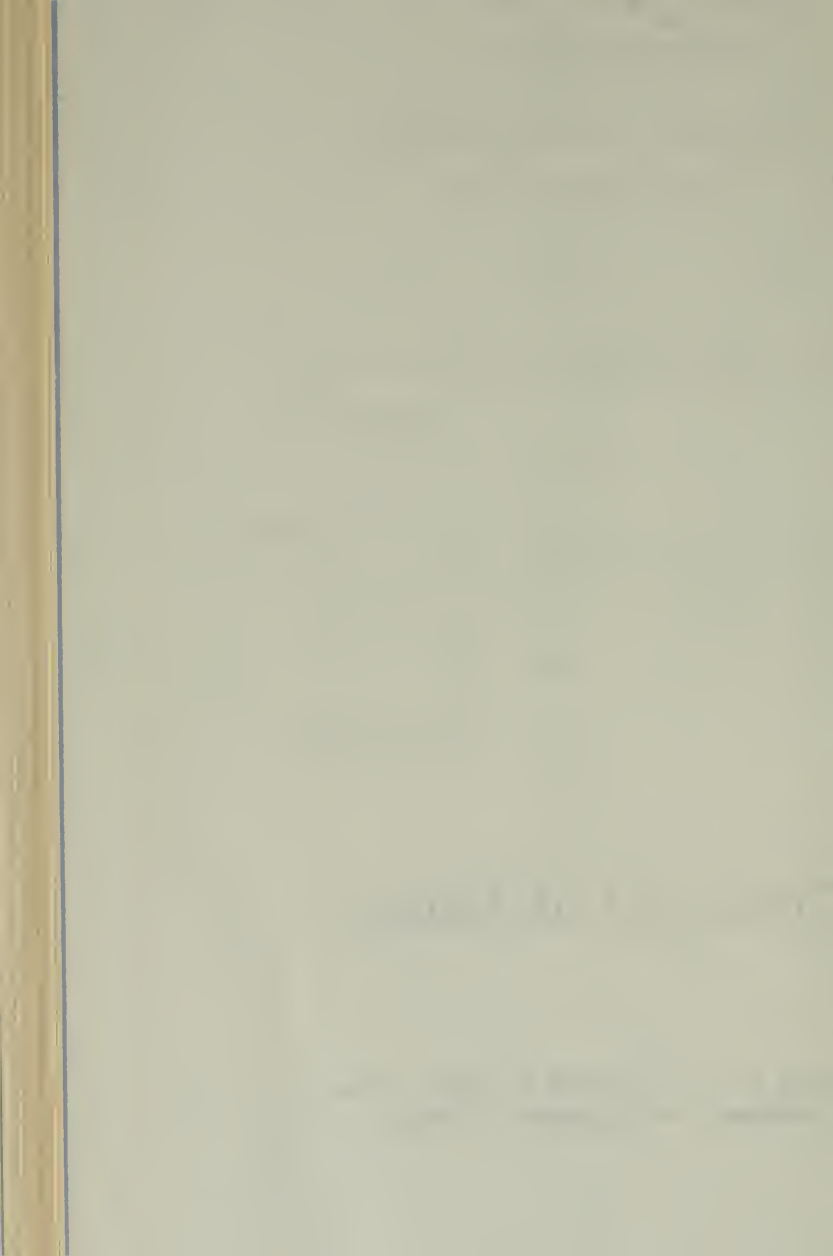
Respondents.

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Transcript of Record

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Petition for Enforcement of Order of the  
National Labor Relations Board



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Guerin, Ed R.

—direct .....

—cross .....

—redirect .....

Spicher, Dick W.

—direct .....

—cross .....

Witnesses, Respondents':

Guerin, Ed R.

—direct .....

—cross .....

Martin, Lloyd E.

—direct .....

—cross .....

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## AND ADDRESSES OF ATTORNEYS

Member National Labor Relations Board:

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Assistant General Counsel, National Labor  
Relations Board,  
Washington, D. C.;

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Pacific Building,  
San Francisco, Calif.

Attorneys Robert S. Guerin, et al.:

N G. EVANS, ESQ.,

Hobart Building,  
San Francisco, Calif.





United States of America  
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Important—Read Carefully

A charge is filed by a labor organization, individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g) and (h) of the National Labor Relations Act. Instructions: File an original and 4 copies of this charge with the NLRB Regional Director for the area in which the alleged unfair labor practice or is occurring.

Case No. 20-CA-274.

Date: 7/25/49.

Case Status Checked by:

Employer Against Whom Charge Is Brought:

Name of Employer: R. B. Guerin and Company.

Address of Establishment: P. O. Box 201,  
South San Francisco; East Grand Ave. &  
Marina Way, San Francisco, California.

The above-named employer has engaged is engaging in unfair labor practices within the meaning of Section 8(a), Subsections (1) through three of the National Labor Relations Act. These unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

Dick W. Spicher was employed by the above-named company on July 7, 1949, as a mechanic, at a salary of \$2.22½ per hour on the basis of 9-hour day, 6-day week, and was discharged on Friday, July 8, 1949, as a foreman and master mechanic, for the reason that he was not a union member.

It was not known whether or not the above-named company operated under a union contract; however, although Mr. Spicher's work was deemed satisfactory he was discharged maliciously, without regard to the provisions of the above-named sections, by the above-named company at their operations near Alturas, California.

3. Full Name of Labor Organization, Local Name and Number, or Person Charged:

Dick W. Spicher (individual).

4. Address:

1503 Austin St., Klamath Falls, Oregon

ame of National or International Labor  
nization of Which It Is an Affiliate or  
tituent Unit:

s of National or International, if Any:

tion:

Declare That I Have Read the Above  
ge and That the Statements Therein Are  
to the Best of My Knowledge and Belief.

y /s/ E. S. HAWKINS,

Attorney in Fact,

2748 Wiard St.,

Klamath Falls, Oregon.

e of representative or person filing

.)

25-49.

f any):

False Statements on This Charge Can  
ed by Fine and Imprisonment (U. S.  
e 18, Section 80).

ed in evidence as General Counsel's Ex-  
-A.]

July 18, 1950.

United States of America  
National Labor Relations Board

FIRST AMENDED CHARGE AGAINST  
EMPLOYER

Important—Read Carefully

Where a charge is filed by a labor organization or an individual or group acting on its behalf, a complaint based upon such charge will not be filed unless the charging party and any national or international labor organization of which it is a member or constituent unit have complied with Sections (g), and (h) of the National Labor Relations Act.

Instructions—File an original and 4 copies of the charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Case No. 20-CA-274.

Date Filed: 1/5/50.

Compliance Status Checked by:

1. Employer Against Whom Charge Is Filed

Name of Employer: Robert S. Guerin,  
Burn B. Guerin, Ed. R. Guerin, d

Guerin & Co., General Contractors

Address of Establishment: P. O.

ber of Workers Employed: Not known.  
re of Employer's Business: General Con-  
ctor.

ve-named employer has engaged in and  
g in unfair labor practices within the  
f Section 8 (a), subsections (1) and (3)  
ional Labor Relations Act, and these un-  
practices are unfair labor practices affect-  
re within the meaning of the act.

f the Charge:

W. Spicher, an individual, was employed  
e above-named Company at its operations  
Alturas, California, on July 7, 1949, as  
ehanic at a salary of \$2.22½ per hour on  
asis of a 9 hour day for 6 days a week.

or about July 8, 1949, the above-named  
pany, acting through its shop foreman and  
er mechanic, and by its officers, agents  
epresentatives, discharged D. W. Spicher,  
individual, because he did not have a clear-  
from Operating Engineers' Local Union

the above acts and by other acts and  
ct, the above-named Company, acting  
gh its shop foreman and master me-  
e, and its other officers, agents and rep-  
tatives, has interfered with, restrained  
coerced its employees and is interfering  
restraining and coercing its employees

3. Full Name of Labor Organization,  
Local Name and Number, or Per  
Charge:

Dick W. Spicher (individual.)

4. Address:

1503 Austin Street, Klamath Falls

Telephone No.: 8216.

5. Full Name of National or International  
Organization of Which It Is an  
Constituent Unit:

6. Address of National or International,

7. Declaration:

I declare that I have read the ab  
and that the statements therein are  
best of my knowledge and belief.

By /s/ E. S. HAWKINS,

Attorney in Fact,

20748 Wiard S

Klamath Falls,

(Signature of representative or per  
charge.)

Date: January 6, 1950.

Wilfully False Statements on This C  
Be Punished by Fine and Imprisonme  
Code, Title 18, Section 80.)

[Admitted in evidence as General Cou

United States of America  
the National Labor Relations Board  
Twentieth Region  
Case No. 20-CA-274

e Matter of:

S. GUERIN, RAYBURN B. GUERIN,  
E. GUERIN, Individually and as Co-part-  
d/b/a R. B. GUERIN & COMPANY,  
ERAL CONTRACTORS,

and

. SPICHER, an Individual.

## COMPLAINT

ng been charged by E. S. Hawkins, attor-  
t for Dick W. Spicher, an individual, that  
Guerin, Rayburn B. Guerin, and Ed R.  
dividually and as co-partners, d/b/a R. B.  
Company, General Contractors, have en-  
and are now engaging in certain unfair  
actices affecting commerce as set forth in  
nal Labor Relations Act, 29 U.S.C.A., 141  
Supp. 1947), herein called the Act, the  
ounsel of the National Labor Relations  
behalf of the National Labor Relations  
rein called the Board, by the Regional  
for the Twentieth Region, designated by  
l's Rules and Regulations, Series 5, as  
Section 802.15, hereby i



## I.

Robert S. Guerin, Rayburn B. Guerin, R. Guerin, hereinafter individually and referred to as Respondent, are co-partners in business under the trade name and style Guerin & Company, General Contractors, principal office and place of business in San Francisco, California, and with a branch office in Cedarville, California. Respondent is engaged in the business of general contracting and construction work.

## II.

At all times material herein the conduct of the business described in paragraph I, a Respondent caused and continues to cause substantial amount of equipment, materials, and supplies to be purchased, delivered and transported in interstate commerce from and through the states and territories of the United States other than the State of California to its offices located in the State of California.

## III.

Operating Engineers Local Union No. 1000, International Union of Operating Engineers, hereinafter called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

## IV.

On or about July 7, 1949, Dick W. Spivey was employed by Respondent to work as a mechanic.



## V.

about July 8, 1949, Respondent, by its agents and representatives, and particularly master mechanic, discharged Dick W. Spicher from employ because he did not have a clearance from the Union.

## VI.

The acts set forth in paragraph V, above, Respondent did discriminate and is now discriminating against Dick W. Spicher with regard to the hire and tenure of employment and the terms and conditions of employment of Dick W. Spicher and did thereby encourage and thereby encouraging membership in labor unions, and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

## VII.

The acts set forth in paragraphs V and VI, Respondent did interfere, restrain and is interfering with, restraining and is interfering with its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and did engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a) of the Act.

## VIII.

The acts of Respondent as set forth in paragraphs V, VI, and VII, above, occurring in connection with the operations of Respondent described

commerce among the several states, and to  
to labor disputes, burdening and obstructing  
commerce and the free flow of commerce.

## IX.

The aforesaid acts of Respondent, as set forth in paragraphs V, VI and VII, above, constitute unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 20th day of April, 1950, issues his order of complaint against Robert S. Guerin, Rayburn B. Guerin, R. Guerin, individually and as co-partners of R. B. Guerin & Company, General Contractors, Respondent named herein.

[Seal]      /s/ GERALD A. BROWN,  
Regional Director, NLRB  
Labor Relations Board

[Admitted in evidence as General Counsel's Exhibit No. 1-E.]

## ANSWER OF RESPONDENTS

Now Robert S. Guerin, Rayburn B. Guerin, Guerin, individually and as co-partners B. Guerin & Company, General Contractors, answering the complaint herein on file, say, and allege as follows, to wit:

### I.

The allegations contained in paragraphs I of said complaint.

### II.

In paragraph III of said complaint, respondents allege that they are without sufficient knowledge or belief to enable them to answer the allegations set forth therein, and basing their answer on such ground deny generally and specifically, and every, all and singular the allegations contained.

### III.

In each and every, all and singular, generally and specifically the allegations set forth in paragraphs V, VI, VII, VIII and IX of said com-

and for a Second, Separate and Distinct Answer to the complaint herein said respondents say, and allege as follows to wit:

tions as R. B. Guerin & Company engaged in interstate commerce as defined and set forth in the National Labor Relations Act, 29 U.S.C. § 1 et seq., and that by reason thereof this Board has no jurisdiction over said respondents in connection with the matters alleged in the complaint on file.

And as and for a Third, Separate and Cross Defense to the complaint herein said respondents allege as follows, to wit:

I.

That said complaint is defective and said Board is without jurisdiction to proceed in said matter by reason of the fact that there has been a misjoinder of necessary parties, to wit, the Associated General Contractors of America, a corporation having many members thereof, and the Operating Engineers Local Union No. 3 of the International Brotherhood of Operating Engineers and the members thereof.

Wherefore, respondents pray the judgment and decision of this Board that said complaint be dismissed and respondents be dismissed.

/s/ JOHN G. EVANS,

Attorney for Respondents

State of California,  
City and County of San Francisco—ss.

Ed R. Guerin, being first duly sworn, deposes and says that

led matter; that he has read the fore-  
ver and knows the contents thereof, and  
me is true of his own knowledge, except  
matters which are therein stated upon  
n or belief, and as to those matters he  
to be true.

/s/ ED R. GUERIN.

ed and sworn to before me this 17th day  
50.

/s/ CATHERINE E. KEITH,  
blic in and for the City and County of  
rancisco, State of California.

mission Expires December 16, 1950.

ed in evidence as Respondent's Exhibit

July 18, 1950.

[Title of Board and Cause.]

## STIPULATION FOR CORRECT OF RECORD

It is hereby stipulated by and between  
mentioned Company, Respondent herein,  
Bamford, Counsel for the General Counsel  
transcript in the above-entitled case be co  
follows:

Wherever occurring on pages 147,  
name "Archie Ball" be changed to  
bald."

Dated at San Francisco, California, the  
of August, 1950.

ROBERT S. GUERIN, RAYMOND B.  
ED R. GUERIN, Individually and  
partners, d/b/a R. B. GUERIN & C

By /s/ JOHN G. EVANS,  
Counsel for the Re

/s/ HARRY BAMFORD,  
Counsel for the Ge  
Counsel.

Dated at San Francisco, California, the  
of August, 1950.

Received August 8, 1950.

## INTERMEDIATE REPORT

### Statement of the Case

a first amended charge filed January 6, Dick W. Spicher, through E. S. Hawkins, in fact, the General Counsel of the National Labor Relations Board, herein called respectively General Counsel and the Board, by the Director for the Twentieth Region (San Francisco, California), issued a complaint dated January 19, 1950, against Robert S. Guerin, Rayburn Guerin, and Ed R. Guerin, individually and as partners, doing business at R. B. Guerin and Company, herein called the Respondents, alleging that the Respondents had engaged in and were engaged in certain unfair labor practices affecting interstate commerce within the meaning of Section 8 (a) (1) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint, first amended charge, and notice of hearing thereon were duly served upon Respondents and the charging party.

As to the unfair labor practices, the complaint alleged in substance that Respondents are engaged in the business of general contracting and construction work in the State of California, and in the conduct of that business have caused the transportation of interstate commerce of substantial



charged Dick W. Spicher from their construction operations near Altadena, California, because he did not have a clear card from the International Union of Operating Engineers Local Union No. 3, which was the only union called the Union.

Respondents filed an answer on July 1, 1949, admitting the nature of their business and the employment of Dick W. Spicher in 1949, as a mechanic on their operations in California, but denying the commission of unfair labor practices. It denied that Respondents were engaged in interstate commerce and that the Board had jurisdiction. It also alleged that Respondents were without jurisdiction to proceed in the cause of nonjoinder of necessary parties, the Associated General Contractors of America, called the AGC, and the Union.

Pursuant to notice, a hearing was held on July 18 and 19, 1950, at San Francisco, California, before the undersigned Trial Examiner, designated by the Chief Trial Examiner. The Respondents and Counsel were represented by counsel, and the charging party appeared in person. All parties participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

At the outset of the hearing, General Counsel moved for judgment by default on the



Respondents moved for permission to answer. The record shows that a copy of the complaint, first amended charge, and notice of hearing were properly served by registered mail on Respondents at their main office in South San Francisco, California, on April 21, 1950. Respondents offered no excuse for failure to file an answer, other than the statement of their General Counsel, Mr. Evans, that there had been some question about a week before the hearing whether Respondents had retained counsel for the Associated General Contractors of America would represent Respondents in the hearing. Although it appears that Respondents were frequent in consulting counsel for purposes of preparing the answer, the record also shows that there were pre-trial conferences between General Counsel and Mr. Evans, representing Respondents, about a week before the hearing opened, for the purpose of stipulating certain facts in preparation for the hearing. At the opening of the hearing, Respondents were represented by Mr. Evans and two partners, Ed R. Guerin and Robert S. Under these circumstances, the Trial Examiner denied the motion of General Counsel for summary judgment by default and permitted Respondents to answer.

During the course of and at the close of General Counsel's case, Respondents moved to dismiss the complaint upon the grounds that they were not interested parties to the controversy, that the complaint was

dition by the Board would not effectuate the purposes of the Act; and that the AGC and the Union should have been joined as necessary parties to the motions were denied, with leave to renew the motions at the close of the hearing. They were renewed at the close of the hearing on the motions previously stated, and the Trial Examiner made the decision. The motions are now disposed of in the findings and conclusions in this Report. Respondents also moved to strike all evidence and testimony of General Counsel relating to the AGC, its membership, the nature and volume of business of the AGC, and the contractual relations between the AGC and the Union; decision on that motion is now reserved; it is now denied for reasons stated hereafter.

All parties presented oral argument before the Trial Examiner at the close of the hearing. Respondents have not availed themselves of the opportunity afforded them to file briefs and propose findings of fact and conclusions of law.

Upon the entire record in the case, and upon the observation of the witnesses, I make the following findings of fact:

### Findings of Fact

#### 1. The Business of the Respondents

During the year 1949 and at the time of the hearing, Respondents Robert S. Guerin, Raymond S. Guerin, and Ed R. Guerin were engaged in the business of operating a business of

rin & Company, with their principal office South San Francisco, California, and a office in Cedarville, Modoc County, California, during the period from June 1, 1949, to 1950, Respondents engaged in construction as prime contractor or subcontractor on five construction operations within the State of California. The contract prices of these projects aggregated approximately \$745,762.37. Four of the projects involved filling, excavating, grading, and clearing of ground in preparation for building construction in San Francisco and South San Francisco, California, and totaled approximately \$62,000. These contracts had been completed prior to the hearing.

The fifth project, known as the "Modoc job," was a time contract with the California State Department of Public Works for the clearing, filling, and drainage of 8.1 miles of California Highway No. 28 between Tom's Creek and Cedarville in Modoc County, California,<sup>1</sup> at a contract price of approximately \$683,522.57. This operation constituted by far the major portion of Respondents' business in the above fiscal period, and was in progress at the time of the hearing. It was the only project involved in this proceeding. The performance of the above contracts during

the approximate location and size of the project shown by the portion of Highway No. 28

the fiscal period stated, Respondents made purchases totaling approximately \$629,280; this figure included \$359,488.19 for the direct purchase of materials and equipment, including cement, reinforcing steel, corrugated pipe, kerosene, gas, oil, Diesel fuel, and related items, all from sources entirely within California, and \$269,791.81 for rental of trucks, Caterpillar tractors, and other heavy equipment. Respondents' other purchases were approximately \$18,765.00, which amounted to about 3 per cent of their total purchases or about 5 per cent of the total materials and equipment purchases. Respondents purchased 100 per cent of their rented equipment from dealers within California; approximately half of it was rented with the option to purchase which were never exercised. The value of equipment comprised between 20 and 30 per cent of the total value at about \$300,000; 6 of these were purchased and were valued between \$100,000 and \$200,000; most of the new items were Caterpillar equipment, which, though rented from dealers in California, had been almost wholly manufactured and assembled in the State of Illinois.

California State Highway No. 28, involved in the "Modoc job," is a standard two-lane highway which runs from Redding, Shasta County, northeastward to and across Modoc County, California, and thence to the Nevada border where it connects with Nevada State Highway No. 20. The project is a 10-mile stretch of highway

highway No. 28 continues as a segment of  
way No. 395 for about 10 miles, and then  
ff eastward and continues to the Nevada

U. S. Highway No. 395 is a main traffic  
necting lower Oregon, northern California  
stern portion of Nevada. U. S. Highway  
averses the northern part of California  
oastline to Alturas where it joins U. S.  
No. 395. The portion of California State  
No. 28 between U. S. Highway No. 395  
evada line appears to be the main traffic  
necting Modoc County and the northeast  
California with the adjoining northwest  
Nevada.<sup>2</sup>

uly 8, 1949, Respondents, as a partner-  
been a member of the Northern Califor-  
er of Associated General Contractors of  
(AGC), a corporate organization of ap-  
y 280 persons, firms, and corporations  
the highway and heavy engineering con-  
business in the northern part of Califor-  
main purpose of the organization is the  
nt of conditions under which its members  
d one of its main functions is the nego-  
execution of labor agreements on behalf  
nbers with various labor organizations.

ve findings are based on uncontradicted  
ed testimony of Ed R. Guerin, a sum-  
espondents' transactions prepared by him  
Exhibit No. 2, and the

The members of the Northern California Association of AGC during 1949 performed about 12 of all heavy engineering and highway construction in northern California, doing a gross value of work in that area in excess of 150 million dollars. 12 of its members<sup>3</sup> performed construction during 1949 outside the State of California. The Board has previously taken jurisdiction over these members<sup>4</sup> in proceedings under the National Labor Relations Act.

The AGC has negotiated and executed agreements with its members master collective bargaining agreements with the Union dated May 27, 1948, and July 15, 1949, which covered wages and other working conditions of all employees including heavy-duty mechanics, performing within the recognized jurisdiction of the AGC. These agreements were binding upon the AGC during the periods of their operation. The agreement of May 28, 1948, was effective from that date and remained in effect until April 1, 1949, when the agreement dated July 15, 1949, became effective.

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<sup>3</sup>Guy F. Atkinson Company, Bechtel Company, Bates & Rogers Construction Corporation, Corporation, Peter Kiewit Sons' Company, Inc.; A. Teichert & Sons, Inc.; Utah Construction Company, J. R. Reeves, Brown-Ely Construction Company, West Piping & Supply Co., Inc., and Foster Construction Corporation.

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<sup>4</sup>Guy F. Atkinson Co., 90 NLRB 1000; NLRB 88; J. R. Reeves and A. Teichert



and remained in operation until April 30, the terms and effect of these agreements considered further in the discussion of the of Dick W. Spicher.

Above facts Respondents argue that (1) it is without jurisdiction because they are engaged in interstate commerce; and (2), if engaged in such commerce, their operations have so great an effect on that commerce that the assertion of jurisdiction by the Board would not effectuate the purposes of the Act. I do not agree with this claim. Respondents' out-of-State purchases of \$100,000, their rental of equipment valued at \$10,000, which had its origin in another State, the fact that during 1949 and 1950 over 90 per cent of their business consisted of the reconstruction of a substantial part of a main traffic artery connecting California and Nevada which also comprises a substantial portion of a network of U. S. highways linking California with Oregon and Washington all indicate that Respondents' operations

The above findings as to the AGC are based on the elicited and credited testimony of Winfield H. Smith, the 1950 membership roster of the Northern California chapter of AGC (General Counsel's Exhibit No. 5), and the AGC-Union collective bargaining agreements of May 28, 1948, and July 15, 1948 (General Counsel's Exhibits Nos. 3 and 4). Similar labor agreements were also signed by officials of the Central California chapter of AGC, which comprised of persons, firms, and corpora-

in that period, particularly on the "Mo had a substantial connection with interstate commerce. It is clear that a labor dispute and stoppage of work on the reconstruction Highway No. 28 would have deprived persons and firms travelling in interstate commerce in northern California and Nevada of the use of the main artery of traffic between those States. The Board has recently taken jurisdiction over other general contractors engaged in road construction who did less business with less out-of-State purchases than Respondent in the Matter of Brown-Ely Co., 87 NLRB 1000, the Matter of J. R. Reeves and A. Teicher, Inc., 89 NLRB No. 1. In those cases the Respondents were involved, among other work, in the construction of U. S. highways. Although Respondent is not working directly on a U. S. highway for the Federal Government, I see no less reason for the assertion of jurisdiction here, since over 90 per cent of Respondents' operations involved a State highway which is not only a segment of a national U. S. highways, but also the main artery of interstate traffic connecting that network in California with the State of Nevada.

General Counsel offered the evidence concerning the organization and functions of the Northern California chapter of AGC, its contractual relations with the Union and Respondents' membership therein solely on the question of jurisdiction to



tions between the members of AGC and  
1, and a consequent impact upon interstate  
. General Counsel disclaimed any inten-  
now by this proof a common labor policy  
and the Union as motivating the discharge  
here. Respondents therefore argue that  
ence is immaterial and should not be con-  
n the question of jurisdiction alone, that  
ly be considered by the Board for that  
f offered to show a common labor policy  
rties and AGC, in which event AGC and  
are necessary parties to this proceeding.  
theory, Respondents moved to strike the  
in question and also to dismiss the pro-  
for nonjoinder of AGC and the Union.  
on based on nonjoinder of parties will be  
d in the discussion of the merits hereafter.  
r the evidence in question relevant and  
for the following reasons: The operations  
mbers of the Northern California chapter  
outlined above, both within and without  
of California, clearly have a substantial  
n interstate commerce. Furthermore, al-  
espondents' membership in AGC became  
July 8, 1949, the very day of the alleged  
charge of Spicher, it appears from the  
dicted testimony of Respondent Ed R.  
at Respondents' predecessor firm, Guerin  
in which he had also been a partner, was  
e of AGC for many years past during

agreements between AGC and the Union. The facts indicate a continuing identity of interest between Respondents and their predecessor AGC, in their relations to the Union, which dates the events of July, 1949, alleged in the complaint. Finally, in the bargaining period ending April 30, 1949, the termination date of the master agreement between AGC and the Union, on July 15, 1949, the effective date of the new contract, a labor dispute between a member of the Union and the Union might impede the progress of negotiations and consummation of the new contract, which would have a direct effect on the over-all labor relations of the AGC and its members and could lead to a labor dispute causing widespread interruption of the operations of the members.

Respondents' argument also involves the doctrine of sequitur. I know of no rule of evidence or administrative procedure which requires General Counsel to offer this proof on the main issue of the discharge, to support a theory not advanced by him, before the Board can consider the preliminary issue of jurisdiction. In other words, before offering this evidence to show the labor difficulty of one member of AGC and its wide impact on the broad relations of its members with the Union, General Counsel is not required to first offer the evidence to prove, in reverse, the over-all AGC Union relationship and

and material on one point has been re-  
can be considered by the Board if relevant  
ial on any other aspect of the case. In  
ction, the significance of the contracts  
LGC and the Union, and Respondents'  
ion of them, will be considered below in  
the discharge of Spicher. Respondents'  
strike the above evidence is therefore

basis of all the foregoing facts and con-  
, I find, contrary to Respondents' con-  
that Respondents are and have been  
interstate commerce, and that the asser-  
jurisdiction over their operations would  
the policies of the Act.<sup>6</sup>

### The Labor Organization Involved

g Engineers Local Union No. 3, of the  
nal Union of Operating Engineers, is a  
nization within the meaning of Section  
e Act, which admits to membership em-  
Respondents.

### II. The Unfair Labor Practice

le issue in the case is whether Respond-  
rged Dick W. Spicher from their employ  
1949, because he did not have a clearance  
Union.

. Spicher, a resident of Klamath Falls,

Oregon, came to work for Respondent "Modoc job" on July 6, 1949, as a mechanic. That work involves the major and repair of heavy transportation and tion equipment such as Caterpillar tractors, dozers, excavating shovels, and trucks of types. Overhaul and repair of such equipment requires the disassembly and assembly, with replacement of parts, of transmissions, rear end final drives, and other components.

Spicher came down to the Modoc job at the request of one Murien, of Murien and Cox, contractors of a portion of the clearing work on the project. This firm was using two Caterpillar tractors for the clearing work, and in the course thereof, Murien had asked Respondent to overhaul one of the tractors overhauled by their mechanic. Murien became dissatisfied with the work of the mechanic, whereupon Ed R. Guerin told him that a mechanic is satisfactory to him, arranging for the man chosen by Murien and charge Murien and Cox for his labor and the cost of parts and materials used in the overhaul. Murien then contacted Spicher through a mutual acquaintance and asked him to come to work on the job, advising him of the Respondents' field office of his choice. An office of Respondents called Spicher on July 10, 1949, advising him to come to Cedarville at once if they needed him, and also advising that Respondents had already cleared him with the

ld office at Cedarville on the afternoon  
th, Murien met him and took him into the  
e, where an employee of Respondents had  
some paper for Respondents' records.  
ld not work that afternoon, but reported  
the next morning, July 7, at the shop,  
was assigned by Lloyd Martin, master  
of Respondents, to go out on the project  
ul equipment. He went out on the job  
tools and worked on Murien's tractor and  
ipment that day.

Spicher reported for work July 8, 1949,  
ld him to come back to work on the eve-  
, starting at 3:30 p.m. When he returned  
ternoon to start that shift, he met one  
, business agent of the Union, outside  
nts' shop and office, and had a discussion  
At the outset of the conversation, Martin,  
a member of the Union, was inside the  
y a few feet away. Archibald asked  
f he had his union book and clearance  
Union. Spicher replied that he did not  
book with him, and that he had been  
th the Union through Respondents' office.  
moment Martin came up to them, and  
asked Martin if he had seen Spicher's  
When Martin said he had not, Archibald  
Spicher he could do nothing for him,  
e had men at the union office waiting for

said "Yes," and as he and Archibald wa together, Martin told Spicher, "I guess you, then." Spicher did not work that was paid off for his work on July 7, 1949 left the job.<sup>7</sup>

Spicher has not worked for Respond July 8, 1949. Respondents made him a tional offer of reinstatement on September

Respondents claim that Spicher was mistake, that he was not a qualified mechanic, and that he left the job of his on July 8, 1949, either because he disc could not do the work, or because of s pulsion from the Union. In support of of a mistaken hiring, Ed R. Guerin tes he and Murien found Spicher working Murien's tractors (apparently on July Murien indicated he had never seen Spich

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<sup>7</sup>The findings of the above events ar sation are based upon the credible tes Spicher. Archibald did not testify in th do not credit the denial of Martin that any of the conversation or that he c Spicher: he admitted that he was close the conversation, and that he had bee Archibald earlier that day that he was Spicher, a nonunion man, on the job; h of testifying and attitude on the stand w and not straightforward; much of his was vague and equivocal, and some of it s dictory; and in general his testimony w in candor and other indicia of veracity. I



d Spicher "where the other man was," to Spicher replied that the other man got his back and sent Spicher in his place. I reject testimony because I have already found, on the Spicher's credible testimony, that he had Murien about the job beforehand, and that met him when he first arrived at the project to it that he was signed up by Respondents. This is supported by the significant fact that, in his version of the meeting between Spicher and Murien, did not indicate that either Murien objected to Spicher's continuance on the job nor that Murien, who was a "pretty fussy" man about the overhaul and care of his tractors, had ever criticized Spicher's work. Murien was called by Respondents to testify. It is clear from the evidence on this point, and I find, that Spicher was not a stranger to Murien on July 6, 1944, that Murien brought Spicher down to the job, and that there was no mistake about his employ-

ment. In support of the claim that Spicher was not a competent mechanic, Martin, the union master mechanic, testified that he checked on Spicher's work frequently during the day that he was on the job, and concluded that Spicher was not a capable mechanic. I consider Martin's testimony on this point of little weight or of any credit. Although he claimed to have 30 years of experience in work on heavy machinery, he could not recall a single detail about

in vague statements, such as that Spicher doing the work in a "workmanlike manner," his "methods were wrong," and the like. He admitted his inability to recall details of Spicher's statements on July 7th to the fact that "it has been a long time"; yet he was able to recall and quote a conversation with Archibald, the agent of the Government, about Spicher which occurred the very next day, July 8th. Moreover, although Spicher appeared to him to be incapable of doing the work, Marshall talked to him about his ineptitude, nor did he take steps to correct his "wrong" methods. Spicher grudgingly admitted, on the other hand, that Spicher did some parts of his work "fairly well" that he appeared qualified to do some of the work of heavy-duty mechanic. Respondents rely on Spicher's admitted errors in details of the type of tractors which he worked on for them, but I consider this of no significance in the face of Spicher's own credible testimony of his experience of over 16 years as a heavy-duty mechanic in which time he had worked on a great deal of heavy construction and transportation equipment; his failure to remember details of a particular type of tractor on which he had not worked some time does not detract from the general reliability of his testimony. On the basis of the evidence on this point, I am satisfied, and I find, that Spicher was qualified to do the work assigned to him by Respondents, and that



attention that Spicher left the job because compulsion by the union agent, Archibald, directly on Spicher, is not supported by the evidence and is completely refuted by the substantial evidence of Spicher, corroborated by the admissions of Guerin and Martin, which have been discussed above.

Respondents claim that Spicher's testimony as to the circumstances of his discharge is inherently unreliable, and that at most it proves only that he left the job after a talk with the union agent. The court has already resolved the issue of credibility in the findings made above. However, if I had not done so, it would be about whether Respondents discharged Spicher and the reason therefor, it is set at rest by the admissions of Respondent Ed R. Guerin, master mechanic, Lloyd Martin, which not only support Spicher's testimony, but also clearly show that he was discharged by Respondents in connection with a discriminatory hiring policy pursued against them on the Modoc job.

Guerin was called as an adverse witness by General Counsel. At first he repeatedly testified that Respondents did not know or care whether their employees on the Modoc job did or did not belong to the Union, and that it was not their policy to hire only persons approved by the Union. When confronted with a letter he sent to Spicher stating Respondents' version of the discharge, however, he admitted that their policy was

union men on the job, Respondents would a man who was not cleared by the Union after Spicher's discharge and when the Office of the Board wrote Respondents dated July 25, 1949, requesting Respondent's opinion of the discharge, Guerin had Respondent's bookkeeper on the job investigate the circumstances and prepare a reply to the Board under date of July 28, 1949, which Guerin signed and sent. The letter states, in pertinent part:

To the contrary, Mr. Spicher was not discharged upon the authority or instigation of our master mechanic nor by any partner of our company but was informed personally by a business representative of Local No. 1 of the Operating Engineers of Redding that he was not to work on this or any other project until he was reinstated and became a member in good standing. We were likewise told by the business representative that we could not keep this man on the job in violation of our contract with the Association agreed by the Associated General Contractors of America, Incorporated, of which we are a member. This Association represents the interests of tractors and negotiates all contracts with the Labor Unions entailing all types of work. Furthermore, it is our understanding that we must employ union members in good standing or those willing to become affiliated with a union or else have the unions pull the

ed by General Counsel to explain the last  
d sentence quoted above, Guerin testified:

It was up to the Union delegate to sign  
up and give them permits to ask them  
in the Union, which happened in many  
up there. It is happening right now up

Well, was it your policy if the Union  
ed to clear a new employee that you would  
refuse to hire him or keep him on your  
ll?

It was agreed when we went on the job  
they would clear anyone that was com-  
t enough to handle a job up there. I am  
g about carpenters or 'catskinners or  
d crews or grease monkeys or mechanics—  
f the crafts that we had to have to accom-  
the job.

Well, on your part was it your agree-  
that you would employ only those who  
cleared by the Union?

Yes. What else could we do, if they  
pull their regular members off? We had  
adred and fifty, two hundred people up

Was this policy made known throughout  
operation to your supervisors?

Absolutely.

was questioned further about the prepara-

The Witness: Well, I think there sort of a citation came in and it was up and he said, "I think I have got generally briefed out" and he wrote just glanced through it and signed it. I believe I'd do it again. I don't see anything wrong with it. We are under contract to have a penalty for completion and for anything else and Number one is to have good plenty of help and no beefs with the Unions or anybody else.

\* \* \*

Q. (By Mr. Bamford): Wasn't it an arrangement between you and the Engineers that if you hired a new man through the Union but on your own man would join the Operating Eng-

A. Yes, ultimately. They were death to do that.

Trial Examiner Frey: Did you ask or order them to join under your and training practices?

The Witness: No, we didn't care if they joined or not, but what are you doing, Mr. Examiner, when just for the one individual probably a hundred walk off the job. That makes it plain to you know. You can't swim upstream in business, but we wouldn't individually

of a case where a man had an opportunity to go in the Union—I have never heard any case where they weren't willing to go that would relieve us of any further beef

\* \* \*

(By Mr. Bamford): Wasn't it the understanding up there in that Cedarville job, Huerin, that all the heavy duty mechanics belonged to the Operating Engineers or were cleared by them?

Get cleared, I will go for that, yes.

He was asked by the Trial Examiner to explain his statement "you can't swim upstream in business," he testified as follows:

Examiner Frey: What did you mean by that statement?

Witness: I meant this: in other words, I believe it came about through asking me questions about how long I had been in the business, in the contracting business, and I said I was in before the Union got really heavy, I believe in the last World War they came very much to prominence, and naturally all our jobs—we would like to have them go peacefully and finish them on time, and that's why I meant we couldn't swim upstream. We had to go along with the trend.

Examiner Frey: You mean you had

Trial Examiner Frey: Does that mean that you were afraid that if one individual kept on the job the Union would take action against you?

The Witness: Well, that is possible.

Trial Examiner Frey: Well, is that what you mean by that statement there?

The Witness: Yes, I will say that that is what I meant, yes.

\* \* \*

Q. (By Mr. Bamford): I am asking you how your policy was; not how many men were up there. Wasn't it your policy that everybody, all of your heavy mechanics and your operators too, I suppose, were to be organized with Local 3?

A. Well, sure.

Q. And that policy was made known to the supervisor, is that correct?

A. Certainly. They were all Union men.

Q. And your master mechanic, Lloren, was a supervisor? A. That is correct.

Trial Examiner Frey: Was he a Union man?

The Witness: Yes.

It is clear from the record that Martin had the power to hire and discharge employees.

When Guerin testified for Respondents that when he signed the letter of July 2, 1934, he was acting as a representative of the Union, he was not acting as a representative of the Union.



ending the letter he discussed it with his  
and regarding that discussion he testified:

(By Mr. Bamford): In your conversation with Mr. Evans, did you discuss the matter whether or not there was a contract between Operating Engineers Local 3 and the AGC?

Well, I assumed that he would know that. In other words, we had been getting help and mechanics and operators out of that local ever since it was formed, and I don't believe that in that phase of it I mentioned to him.

And by "getting help and operators" of the local, you mean that there was a contract, you thought that there was a contract?

Yes.

Not only at the time that the letter was written but at the time that Spicher was terminated from your company, is that correct?

Oh, yes. In fact, I have sat in on the meetings, some of the beefs between the union and the contractors. Of course, this is a new firm that we started, this R. B. Guerin and Company, but I was a member of the firm of R. B. Guerin Brothers and we were a charter member of the AGC for many years, and we would sit down with the different unions on working out the working conditions, wage scales, and I presumed that we were within a contract at that time.

And the contract provided that you had to employ union members in good standing on

A. I understood, with the contract man had ninety days to join the union. I think that is the policy that we follow there. I believe I have read the Wagner Act, and at that time I don't think I had a copy of the Taft-Hartley Act.

It is clear from the record that there was an existing collective bargaining contract in existence between AGC and the Union on July 8, 1948. Spicher was discharged. The master agreement was made May 28, 1948, between AGC and the Union, which Guerin was undoubtedly familiar with, in Section 3 thereof:

In the hiring of employees covered by this agreement, preference shall be given to the Employer and the individual employer hereby to persons who have been employed by Northern California between May 1, 1948, and May 31, 1948, on any work covered by this Master Agreement dated May 29, 1948. No individual employer covered by this Agreement shall hire any person.

Whenever any individual employer hires any new men, he shall post a written notice of such hiring on the bulletin board and shall notify the Union at the same time, which notice shall be given at least forty-eight (48) hours before the work is needed on the job, whenever possible. For the purposes of this paragraph it shall be deemed that such notice be given to the Union.



area in which the job is located. Upon such being given, the Union agrees that it will furnish an adequate supply of competent employees if they are available.

The Collective Bargaining Representatives agree that, if and when a union security clause lawfully be written into this agreement, they will then promptly enter into negotiations concerning hiring and union security clauses. If when hiring and/or union security clauses are written into this agreement pursuant to the negotiations, then this section shall forthwith become inoperative.

Section 8 of the master agreement effective July 1, 1947, between the same parties contained an identical provision, with the exception of an addition of reference to the previous agreement of May 1947. It does not appear from the record that these agreements had been authorized unconditionally in proviso to Section 8 (a) (3) of the Act. Since neither of them were in effect at the time of Spicher's discharge, the exact effect and scope of the hiring provisions quoted above are not material in this proceeding. The agreements are relevant and material only to the question of Respondents' interpretation of their hiring provisions indicated the hiring policy that Respondents followed in the hiring and subsequent rehiring of Spicher. Guerin's testimony quoted

contracts was in effect on July 8, 1949, under his interpretation of it Respondents required to hire only heavy-duty mechanics cleared by the Union and, as a corollary, could not retain in their employ any such not cleared by the Union, under pain of stoppage or strike.

The testimony of Martin also indicates that the policy was in effect when Spicher was hired. Martin admitted that an agent of the Union visited the project regularly once a month to clear nonunion workmen whom Respondents had hired. That all Respondents' employees on the project were union men when hired, or signed up with the Union within 90 days. I do not credit his or Gunderman's testimony as to the 90-day clearance, however, because neither of the contracts upon which Respondents relied contained such a provision; and it was not applied in the case of Spicher, the only nonunion man cleared by the Union. I likewise reject Martin's testimony that the Union had agreed to hire nonunion men hired by Respondents on the project because help was scarce: the facts for the project indicate that this procedure was not followed in Spicher's case; and while Martin intimates that the Union refused Spicher a clearance because he was not a qualified mechanic, that excuse is not supported because Respondents expressly disclaimed any obligation to discharge Spicher because he was inefficient. There is no proof in the record that the union

careful consideration of all the pertinent in the record, I am convinced that the preponderance of credible evidence shows, and on the basis thereof I conclude and find, that Dick W. was discharged by Respondents on July 8, 1954, because he was not cleared for work on the project by the Union, and that by such discharge Respondents discriminated against Spicher with respect to his hire or tenure of employment and other terms or conditions of his employment, in order to deprive him of membership in the Union, and thereby violate Section 8 (a) (3) of the Act. By such discharge Respondents also interfered with, restrained, and coerced their employees in the exercise of rights guaranteed to them by Section 8 of the Act, in violation of Section 8 (a) (1) of the Act.

### The Nonjoinder of Parties

In answer and at the hearing Respondents requested that the complaint be dismissed for non-joinder of AGC and the Union as necessary parties, on the theory that introduction of testimony by the Union Counsel as to labor relations between AGC and the Union indicated that General Counsel was going to prove the discharge of Spicher was part of a common labor policy of AGC and its members (including Respondents) with the Union, on the basis both AGC and the Union should be charged with violation of the Act and

July 28, 1949, to the Board, that the Union Respondents, was responsible for the discharge.

These arguments misconceive the basis of the complaint. The only charges before the Board on the record are against the Respondents, and only one of them. Of the charges of the complaint only charges of discrimination are with a violation of the Act. The complainant alleges, and General Counsel did not claim to prove, that the discharge was the result of the application of a common labor policy by the Respondents and its members. Nor does the complaint charge a violation of 8 (b) of the Act.

Under the Act the Board is empowered to remedy unfair labor practices and to issue a remedy only against parties named in the complaint. Where no charge is filed and no complaint is filed against another party, it is without power to issue an order against such other party.<sup>11</sup> The record in this case does not disclose whether charges were filed or complaints issued against parties other than the Respondents. Under these circumstances, the Examiner has no power to require General Counsel to change the theory of his complaint or to add an additional cause of action which would require the presence of AGC and the Union, either as parties or Respondents of their liability for the discharge found above, or to make others share that liability. On this state of the pleadings and the record, the remarks of the Board in *Carpenter and Sons* and *General Contracting Employers Association*

. 78, relied upon by Respondents, are not in this case. The motion of Respondents for the complaint for nonjoinder of parties is denied.

## The Effect of the Unfair Labor Practices Upon Commerce

Activities of Respondents set forth in Section I, occurring in connection with the operation of the Respondents described in Section I, have a close, intimate, and substantial relationship to interstate, foreign, and commerce among the States, and tend to lead to labor disputes and obstructing commerce and the free commerce.

### V. The Remedy

Having found that Respondents have engaged in unfair labor practices within the meaning of Sections 8 (a) (1) and 8 (a) (3) of the Act, I will order that Respondents cease and desist therefrom and take certain affirmative action in order to effectuate the purposes and policies of the Act.

Having found that Respondents discriminatorily refused to hire Dick W. Spicher on July 8, 1949, because he was not a member of the Union. Since Respondents made an unconditional offer of reinstatement to Spicher on September 21, 1949, I will recommend that any further offer be made. I will recommend that Respondents make

of pay be computed on the basis of each calendar quarter or portion thereof during the period from Respondents' discriminatory discharge on September 21, 1949, the date of Respondent's reinstatement; the quarterly periods, hereinafter called "quarters," shall begin with the first of January, April, July, and October. Loss of earnings shall be determined by deducting from a respondent's earnings to that which Spicher would normally have received for each quarter or portion thereof, his earnings,<sup>12</sup> if any, in other employment during the same period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter. It is also recommended that Respondents be ordered to make available to the Commission upon request pay roll and other records to facilitate the checking of the amount of back pay.

Although it has been found that Respondents discriminatorily discharged only one employee in violation of Section 8 (a) (1) and (3) of the Act, no other violations have been alleged, p

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<sup>12</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and meals, incurred by an employee in connection with his employment and working elsewhere than for Respondents, which would not have been incurred by him but for his unlawful discharge and the consequent loss of his seeking employment elsewhere. See *Monier v. Lumber Company*, 8 NLRB 440. Monier was employed for work performed upon Federal, State, and municipal, or other work-relief projects.



e nature of the unfair labor practice found, instances under which it occurred, and the record in the case in my opinion discloses an end purpose by Respondents to interfere with the rights of employees guaranteed by the Act, and convinces me that the unfair labor practice found is persuasively related to other unfair practices proscribed by the Act, and that if their commission in the future is to be an- from Respondents' course of conduct in 4 The preventive purposes of the Act will be frustrated unless the order is coextensive with the findings. Therefore, in order to make more effective the independent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thereby minimize the industrial strife and burdens and obstructs commerce and thus frustrates the policies of the Act, I will recommend that Respondents cease and desist from in any other manner interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

On the basis of the above findings of fact and the entire record in the case, I make the follow-

### Conclusions of Law

Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, is a labor organization within the meaning of Section 2

2. By discriminating in regard to the tenure of employment of Dick W. Spiche encouraging membership in the above labor organization, Respondents have engaged in engaging in unfair labor practices within the of Section 8 (a) (3) of the Act.

3. By such discrimination, thereby interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in of the Act, Respondents have engaged in engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### Recommendations

Upon the basis of the foregoing findings, and conclusions of law, and on the entire record in the case, I recommend that Robert S. Guernsey, B. Guerin and Ed R. Guerin, individually and as co-partners, doing business as R. S. Guernsey & Company, their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in the International Union of Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, or any other labor organization of their employees.



their hire or tenure of employment or any other condition of employment;

c) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the

to take the following affirmative action which shall effectuate the policies of the Act:

1) Make whole Dick W. Spicher in the manner set forth in the section hereof entitled "Remedy," for any loss of pay he may have suffered as a result of Respondents' discrimination against him;

2) Upon request, make available to the National Labor Relations Board or its agents for examination and copying all pay roll records, security payment records, time cards, personnel records and reports, and all other records necessary to analyze and compute the amount of

South San Francisco, California, at the office in Cedarville, Modoc County, and at any other projects presently operating them, copies of the notice attached hereto marked Appendix A. Copies of said notices shall be furnished by the Regional Director of the Twentieth Region, shall, after being distributed by Respondents' representative, be posted by Respondents immediately upon receipt and maintained by them for sixty (60) consecutive days thereafter in conspicuous places including all places where notices to Respondents are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director of the Twentieth Region in writing within two (2) days from the date of receipt of this Immediate Report what steps Respondents have taken to comply with the foregoing recommendations.

It is further recommended that, unless within twenty (20) days from the receipt of this Immediate Report, Respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondents to take the action aforesaid.

As provided in Section 203.46 of the Labor

l, pursuant to Section 203.45 of said Rules  
lations, file with the Board, Washington  
an original and six copies of a statement  
setting forth such exceptions to the Inter-  
Report or to any other part of the record  
ding (including rulings upon all motions  
ons) as he relies upon, together with the  
nd six copies of a brief in support thereof;  
party may, within the same period, file an  
nd six copies of a brief in support of the  
ate Report. Immediately upon the filing  
atement of exceptions and/or briefs, the  
g the same shall serve a copy thereof upon  
e other parties. Statements of exceptions  
s shall designate by precise citation the  
of the record relied upon and shall be  
rinted or mimeographed, and if mimeo-  
hall be double spaced. Proof of service on  
parties of all papers filed with the Board  
omptly made as required by Section 203.85.  
r provided in said Section 203.46, should  
desire permission to argue orally before  
request therefor must be made in writing  
rd within ten (10) days from the date of  
the order transferring the case to the

event no Statement of Exceptions is filed  
d by the aforesaid Rules and Regulations,  
gs, conclusions, recommendations, and  
led order herein contained shall

ings, conclusions, and order, and all thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 27th day of September, 1950.

/s/ EUGENE F. FREY,  
Trial Examiner.

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[Title of Board and Cause.]

EXCEPTIONS OF RESPONDENTS TO  
INTERMEDIATE REPORT OF TRIAL  
EXAMINER

The Respondents herewith present their objections to the Intermediate Report of the Trial Examiner in this case and rely upon the following grounds:

I.

That the Board is without jurisdiction over this case inasmuch as the respondents were not engaged in interstate commerce.

II.

That the operations of respondents did not have a substantial effect on interstate commerce and the assertion of jurisdiction by the Board would not affect the policies of the National Labor Relations Board Act.

III.

That the Associated General Contractors

was a Union joinder of such necessary

#### IV.

e evidence does not support the findings  
al Examiner.

San Francisco, California, October 11,

/s/ JOHN G. EVANS,  
Attorney for Respondents.

t of Service by Mail attached.

d October 17, 1950.

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States of America Before the National  
Labor Relations Board

Case No. 20-CA-274

e Matter of

S. GUERIN, RAYBURN B. GUERIN  
ED R. GUERIN, individually and as co-  
ers, d/b/a R. B. GUERIN & COMPANY,  
al Contractors,  
and

SPICHER, an individual.

#### DECISION AND ORDER

tember 27, 1950, Trial Examiner Eugene  
issued his Intermediate Report in the  
tled proceeding, finding that the Respond-

tive action, as set forth in the copy of the immediate Report attached hereto. There Respondents filed exceptions to the Immediate Report.

The Board<sup>1</sup> has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Immediate Report, the exceptions, and the record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications:<sup>2</sup>

1. The Trial Examiner found, and we find, that the Respondents are engaged in interstate

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<sup>1</sup>Pursuant to the provisions of Section 10 of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

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<sup>2</sup>We do not predicate our findings hereon on the evidence relating to the organization and membership of The Associated General Contractors of America (AGC) or the Respondents' connection with that organization. Therefore, we find it unnecessary to pass upon the Respondents' motion to set aside the evidence. Nor do we find merit in the Respondents' motion to dismiss the complaint because of the joinder of AGC and Operating Engineers Union No. 3 of the International Union of Marine and Shipbuilding Workers of America. The complaint herein does not allege that either the AGC or the Union has violated the Act, nor



it would effectuate the policies of the  
assert jurisdiction herein. The Respondents'  
s during the period from June 1, 1949,  
June 30, 1950,<sup>3</sup> which are fully described  
intermediate Report, included the clearing,  
grading, and drainage of part of California  
Highway No. 28. This highway connects with  
State Highway No. 8A and portions of it  
with U. S. Highways 299 and 395. The  
received for this phase of the Respondents'  
s exceeded \$683,500. As the repair and  
ence of roads forming a part of an artery  
re constitute services to an instrumental-  
commerce, and as the services rendered by  
ondents exceeded \$50,000 for a 1-year  
he assertion of jurisdiction in this case  
with our recently announced jurisdictional

agree with the Trial Examiner, for the  
stated by him, that the Respondents dis-  
Dick W. Spicher on July 8, 1949, in vio-  
Sections 8 (a) (3) and 8 (a) (1) of the

rial Examiner erroneously stated that this  
tended from June 1, 1949, until June 1,

ollow Tree Lumber Company, 91 NLRB  
Depew Paving Co., Inc., 92 NLRB No. 36.

Upon the entire record in the case and to Section 10 (c) of the National Labor Act, the National Labor Relations Board orders that the Respondents, Robert S. Rayburn B. Guerin and Ed R. Guerin, individually and as co-partners, d/b/a R. B. Guerin & General Contractors, South San Francisco, their agents and assigns shall:

1. Cease and desist from:

(a) Encouraging membership in Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, or in any labor organization of their employees, by inducing any of their employees or discriminating in any other manner in regard to their hiring or employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of the foregoing activities, except to the extent that such right may be affected by an agreement requiring me-



or organization as a condition of employment authorized in Section 8 (a) (3) of the

make the following affirmative action, which said finds will effectuate the policies of the

Make whole Dick W. Spicher, in the manner set forth in the section of the Intermediate Report entitled "The remedy," for any loss of pay he may have suffered as a result of the Respondents' discrimination against him;

Upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all pay roll records, social security records, time cards, personnel records and all other records necessary to an analysis of the amount of back pay due under the terms of the Order;

Post at their main office in South San Francisco, at their branch office in Cedar-Rapids County, California, and at any other place presently operated by them, copies of the findings attached to the Intermediate Report and Appendix A.<sup>6</sup> Copies of said notice, to be

said notice, however, shall be, and it hereby is, amended by striking from line 3 thereof the words, "commendations of a Trial Examiner," and inserting in lieu thereof the words, "A Decision of the Board." In the event that this Order is enjoined by a decree of a United States Court of

furnished by the Regional Director for the  
tieth Region, shall, after being duly signed by the  
Respondents' representative, be posted by the  
spondents immediately upon receipt thereof and  
maintained by them for sixty (60) consecutive days  
thereafter, in conspicuous places, including all  
places where notices to employees are customarily  
posted. Reasonable steps shall be taken by the  
spondents to insure that said notices are not  
defaced, or covered by any other material;

(d) Notify the Regional Director for the  
tieth Region, in writing, within ten (10) days from  
the date of this Order, what steps the Respondents  
have taken to comply herewith.

Signed at Washington, D. C.

JOHN M. HOUSTON,  
Member.

ABE MURDOCK,  
Member.

PAUL L. STYLES,  
Member.

[Seal]

NATIONAL LABOR  
RELATIONS BOARD

the National Labor Relations Board,  
Twentieth Region

Case No. 20-CA-274

Matter of:

S. GUERIN, RAYBURN B. GUERIN,  
R. GUERIN, Individually and as Co-part-  
ners of R. B. GUERIN & COMPANY,  
General Contractors,

and

SPICHER, an Individual.

Tuesday, July 18, 1950

At notice, the above-entitled matter  
was heard at 10:30 o'clock, a.m.

Eugene F. Frey,  
General Examiner.

Witnesses:

RY BAMFORD, ESQ.,  
Pacific Building,  
San Francisco, California,

Appearing on Behalf of the General  
Counsel, N.L.R.B.

N. G. EVANS, ESQ.,  
Cobart Building,  
San Francisco, California,

Trial Examiner Frey: The hearing was in order.

\* \* \*

The Trial Examiner conducting this hearing is Eugene F. Frey.

Now, will counsel and other representatives of the parties please state their appearance for the record.

Mr. Bamford: For the General Counsel, I am Mr. Bamford, N.L.R.B., Pacific Building, San Francisco 3, California.

Mr. Evans: John G. Evans, Attorney for the Respondents, Hobart Building, San Francisco.

\* \* \*

Mr. Bamford: Yes. At this time I wish to offer in evidence the formal documents in this case, which I have marked for identification. They are as follows: General Counsel's 1-A, for identification, original charge, filed July 25, 1949; General Counsel's 1-B, for identification, Affidavit of Service of General Counsel's 1-A, for identification, registry receipt attached; General Counsel's 1-C, for identification, copy of First Amended Petition filed January 5, 1950; General Counsel's 1-D, for identification, Affidavit of Service of General Counsel's 1-C, for identification, with registry receipt attached; General Counsel's 1-E, for identification,

having issue April 20, 1950, by the Director; and General Counsel's 1-F, for ion, Affidavit of Service of General Coun- for identification, with registry receipts

hereupon the documents above referred to marked General Counsel's Exhibits Nos. 1-A to 1-F, inclusive, for identification.) [5\*]

\* \* \*

Examiner Frey: I am not going to rule on whether they [6] are evidentiary or not. General Counsel has stated that they are being offered as exhibits and they will be received by the Ex-aminer on the formal pleadings in the record, with exhibit numbers stated by General Counsel and they are offered for identification.

hereupon the documents heretofore marked General Counsel's Exhibits Nos. 1-A to 1-F, inclusive, for identification, were received in evidence.) [7]

\* \* \*

Examiner Frey: It appears to me from what has been stated by General Counsel and counsel for the Respondents that there has been some discussion between both counsel, as in most litigated cases, of the nature of pretrial conferences on the subjects of the case. The Respondents' party is represented here today by two of the

I believe that under the circumstance deny the General Counsel's motion for judgment on the pleadings and I will p Respondents to file its formal answer.

Mr. Evans: Thank you.

Trial Examiner Frey: Which I will Respondents' Exhibit No. 1.

(Whereupon the document above r was marked Respondents' Exhibit M identification.)

\* \* \*

Mr. Bamford: Ed R. Guerin, please. an [13] adverse witness, Mr. Examiner.

### ED R. GUERIN

a witness called by and on behalf of the Counsel, being first duly sworn, was exar testified as follows:

### Direct Examination

Trial Examiner Frey: Give your full address to the Reporter.

The Witness: Ed Rayburn Guerin. Th Roosevelt Avenue, Burlingame, California

\* \* \*

Q. (By Mr. Bamford): Mr. Guerin your occupation? A. Contractor.

Q. And are you the Ed R. Guerin nam formal document in this case as one of the

ny of Ed R. Guerin.)

r of certain fiscal transactions, relating to  
med company, and ask you if you are  
with this document?

es, I have seen it.

as this document prepared under your  
by employees of the partnership, Mr.

A. Yes. [14]

vans: Partnership of R. B. Guerin?

amford: Yes.

By Mr. Bamford): Do you know that it  
nce summarizes the transactions of R. B.  
Company during the period shown on the

A. Yes.

amford: May this be marked?

\* \* \*

Whereupon the document above referred to  
marked General Counsel's Exhibit No. 2,  
identification.)

By Mr. Bamford): Now, I notice that at  
m of GC2 for identification there are listed  
facts. The second of these, called the Modoc  
seems to have been the major work per-  
y the partnership during the year, is that

A. Yes.

ow can you state if the purchase figure  
the top of the chart would relate principally  
modoc Job?

tell. I guess that is the way it is broken



(Testimony of Ed R. Guerin.)

purchased by you for the Modoc Job, Mr.

A. Well, it would involve equipment and rentals. I believe the rentals are involved in the rentals of [15] equipment.

\* \* \*

Mr. Bamford: General Counsel's 2nd explanation is offered in evidence. [16]

\* \* \*

Trial Examiner Frey: Just a moment more, point. I take [17] there is no dispute between you and counsel on the basis of what the witness has testified about this sheet, that the figures are substantially correct?

Mr. Evans: Yes. There would be this involved there. Let me say this for the record: As requested by Mr. Bamford—I believe it was a telephone conversation—and in our original discussion had with him on July 12th, the following day he telephoned me to say that we couldn't prepare some summary of our operations; that is, to show our purchases and expenditures, the amount that was made in California, and the amount that would be made out of state, and to give our rental breakdown for the job information, and to show under the job information the nature of the job, where it was located, the type of work, the amount of work on the tract, and whether we were general or sub-

ny of Ed R. Guerin.)

at time I stated to Mr. Bamford, that the  
so limited that it would be impossible for  
through our records before this hearing  
out all of our purchase invoices and rental  
ons and give a complete and accurate pic-  
those transactions within the limited period  
nd it was agreed that we would go through  
e this summary to the best of our ability,  
the understanding that neither side would  
it to be absolutely correct, but only that  
represent our best effort to present at this  
correct picture for the [18] Trial Examiner's  
tion.

a correct statement, Mr. Bamford.

mford: That is correct, Mr. Evans.

Examiner Frey: That brings me back to  
al question: Are counsel agreed that the  
here are substantially correct; that is, not  
the last penny or the last dollar, but sub-  
correct for the month and for the job set  
e?

Evans: Well, to answer the Examiner's  
on that——

Examiner Frey: I am not trying to ask  
Evans, to say whether it is 90 per cent  
80 per cent correct, but they are correct  
tent that your client was able to get the  
gures within the limited time afforded, is

(Testimony of Ed R. Guerm.)

our transactions as indicated, but owing to and inability of insufficient time, there n mistake in one direction or another. But that our best efforts and good faith were produce that and we feel that that should tially reflect our operating conditions.

Was that your understanding, Mr. Bam  
Mr. Bamford: Correct, Mr. Evans.

Trial Examiner Frey: On that basis I v rule the [19] objection of respondents to mission of the document and admit it as Counsel's Exhibit No. 2.

(Thereupon the document marked Counsel's Exhibit No 2, in identificat received in evidence.)

\* \* \*

# GENERAL COUNSEL'S EXHIBIT No. 2

## List of Purchases

From June 1, 1949, to and Including June 30, 1950

	Gross Purchases	California Purchases	Out of State Purchases
e, 1949, V25 .....	\$ 88,086.92	\$ 77,508.75	\$ 1,209.17
y, 1949, V28 .....	48,544.34	40,959.15	5,010.19
rust, 1949, V27 .....	51,014.59	43,621.68	5,393.78
tember, 1949, V33 .....	55,733.47	31,452.30	4,709.89
ober, 1949, V35 .....	70,778.46	36,829.86	2,811.17
ember, 1949, V38A .....	70,459.37	23,011.02	450.96
ember, 1949, V39 .....	87,367.04	17,144.47	(2,124.45)
uary, 1950, V43 .....	7,254.71	4,981.28	(6.50)
bruary, 1950, V44A .....	42,790.00	17,531.94	.....
ch, 1950, V46 .....	21,184.93	13,657.20	83.69
il, 1950, V48 .....	21,593.62	23,234.57	603.50
, 1950, V51 .....	29,794.13	16,980.14	206.21
e, 1950, V54 .....	30,680.98	12,575.83	417.60
.....	<u>\$629,282.56</u>	<u>\$359,488.19</u>	<u>\$18,765.21</u>

## Cash Purchases

From June 1, 1949, to and Including June 30, 1950

e, 1949 .....	\$ 509.42	\$ 509.42	.....
, 1949 .....	29.00	29.00	.....
ust, 1949 .....	784.92	784.92	.....
ember, 1949 .....	1,166.03	1,166.03	.....
ber, 1949 .....	1,671.11	1,671.11	.....
ember, 1949 .....	309.47	309.47	.....
ember, 1949 .....	521.66	521.66	.....
uary, 1950 .....	none	none	.....
bruary, 1950 .....	none	none	.....
ch, 1950 .....	152.52	152.52	.....
l, 1950 .....	32.48	28.70	\$3.78
1950 .....	none	none	.....
e, 1950 .....	25.88	21.15	4.73
.....	<u>\$5,202.49</u>	<u>\$5,193.98</u>	<u>\$8.51</u>

	For Whom	Location	Gen. or Sub.	Nature
	So. San Francisco Land & Improvement	So. San Francisco	General	Filling and Developi
	Calif. Dept. of Public Works	Alturas-Cedarville	General	State Highway
	So. San Francisco Land & Improvement	So. San Francisco	General	Filling and Developi
J''	San Francisco, California	San Francisco	Sub	Excavating and Back
'K''	San Francisco Bridge Co.	So. San Francisco	General	Filling

3, 1950.



y of Ed R. Guerin.)

Mr. Bamford): Mr. Guerin, to return  
rt, apart from equipment rentals, what  
principal items represented in the "gross  
' figures?

\* \* \*

l, there would be cement, reinforcing  
agated [20] pipe. There will be gasoline,  
motor oils. There would be purchases of  
quipment—pickups, trucks, tractors.

xaminer Frey: You are referring now to  
representing the Modoc Job?

ness: Yes, but that is including rentals.

xaminer Frey: All right. Proceed.

ntinuing): But I think, generally, if I  
e brief it, it is the general run of any  
I don't believe labor is included in there,  
a substantial amount, but it is ordinary  
There have been tire purchases, natur-  
g bits, rooter points, I suppose stationery,  
stuff like that.

mford: I was referring to the printed  
ch would be steel and concrete, apart  
pment rentals? A. Yes.

ere do you procure your steel from?

l, I think, yes, the Bethlehem Steel in  
Francisco, fabricated that.

your concrete?

cement was manufactured at Los Gatos,  
and the concrete aggregate material was

(Testimony of Ed R. Guerin.)

Q. That is what I was getting at. That

A. There was corrugated pipe, I believe mentioned, in the [21] general run of the pipe.

Q. Where do you procure that?

A. That is the Consolidated Western Steel Corporation, in South San Francisco. The diesel fuel and gasoline, which was a substantial amount, was all California products, and the oils, greases and so forth.

\* \* \*

Q. (By Mr. Bamford): Now, did you purchase outright any equipment during this period?  
Guerin? A. Oh, yes.

\* \* \*

Q. Well, both the Modoc Job and the smaller jobs listed here, did you purchase equipment outright during this period?

A. Yes, we have purchased quite a few pieces of equipment and trucks. [22]

Q. Light equipment? A. Yes.

Q. Where did you procure them?

A. All in the State of California. I think some was bought locally there in Alturas, some was bought in Sacramento, and I think some was bought in South San Francisco.

Q. What makes did you purchase, do you

A. Well, I think we got five or six GMC trucks and I think there are two or three International



by of Ed R. Guerin.)

equipment that you purchased outright  
is period of time?

would say \$50,000 or \$60,000.

w, with respect to equipment rentals, could  
in just what that expression signifies?

ell, we would rent heavy equipment from  
rces. One big account we had, was a  
aterpillar dealer in Los Angeles, and then  
l from individuals. One outfit, I believe  
es were in Eureka, California, but their  
t happened to be in Redding, which was  
se to the job.

w, was the bulk of the equipment rental  
a transaction under which you had the  
buy the equipment, Mr. Guerin? [23]

ell, I wouldn't say the bulk of it. Well,  
would be a little bit over half.

l you exercise those options?

, we haven't.

ve they lapsed? A. Oh, yes.

w, could you approximate what the total  
uld be of the equipment which you rented  
e period from June to June, 1949 to 1950?

ell, I would say that it would be around

d that was all——

resume now. Let me qualify that?

s.

other words, I presume a lot of that

(Testimony of Ed R. Guerin.)

would be at the time that it was on the job being used.

Q. Was some of it new, when it was delivered to you?

A. Yes, some of it was. I would say out of about 20 or 25 pieces were new and delivered on the job new.

Q. Representing about a third or a fourth total of value of the equipment?

A. Well, let's see.

Mr. Evans: I think that the answer is itself, six [24] pieces out of 20 or 25, the price I think. That is in the record, isn't it?

The Witness: Well, you understand, it is something new—now, I will make a comparison with one new "cat," equipped with all the things and bulldozers, is around \$19,000. I am able to get a similar "cat" for \$6,000 or 7 years ago, depending upon the condition.

Q. (By Mr. Bamford): So that the value of the new equipment that you rent would be greater in proportion than the dollar value of the older equipment?

A. Just as I said, about a third.

Q. Even though the rental would be approximately the same?

A. I would say about a third.

Q. Well, could you say that of the \$200,000 that the new equipment which

any of Ed R. Guerin.)

Well, it might. Between \$100,000 and \$150,-  
ould say.

Well, now, did the majority of that equip-  
ne originally from outside the State of Cali-  
Mr. Guerin?

vans: Which equipment?

amford: All of the equipment now. The

Well, now, I am not familiar with what goes  
pickup truck. I believe they are assembled  
re in California. What percentage is actu-  
manufactured here I wouldn't [25] actually be  
tate. But, with caterpillars, I don't know  
ay have a little "SP" on the end of the  
mber, and that means San Leandro, which  
the Bay, and "Peoria," but what per-  
of one "cat," we will say, is made in Cali-  
nd the other percentage in Peoria, I don't  
d I don't know how many have that serial  
that we had on the job that had the "SP"

By Mr. Bamford): Well, of the new equip-  
t was furnished you, could you tell there  
e origin had come?

Well, I could say definitely it came from

ne majority of the new equipment came  
oria?

es but there are parts of that equipment

(Testimony of Ed R. Guerin.)

goes back to Peoria and then it is finally there.

Trial Examiner Frey: When you say you mean Peoria, Illinois.

The Witness: Peoria, Illinois.

\* \* \*

Q. (By Mr. Bamford): What California number did this highway job bear?

A. It is District Two, Route 28, Section

Q. How long is the project on which working? [26]

A. It is 8.104 miles.

Trial Examiner Frey: Was your section project built between Tom's Creek and C

The Witness: That is right.

Trial Examiner Frey: In Modoc County

The Witness: Yes.

Trial Examiner Frey: All right. Proceed

Q. (By Mr. Bamford): Now, does it join U. S. 395 at some point in California branch road off U. S. 395, isn't it?

A. I believe it is.

Q. And doesn't it run into Nevada, E

A. Yes. You can go into Nevada by this road.

Trial Examiner Frey: When was your project completed?

The Witness: It isn't completed yet.

Trial Examiner Frey: Not completed

ny of Ed R. Guerin.)

Witness: No.

Examiner Frey: Does it appear on any State Highway Map that you know of in a line or by some other indication, indicating an incompleted part of the road?

Witness: Yes, it will show an incompleted on the end of our job on to, over to where on to the State of Nevada. It is Route

\* \* \*

### Cross-Examination

Evans: [30]

\* \* \*

umford: No further questions of this wit-

Examiner Frey: Just a moment. I have

you describe in general terms how much construction of State Highway No. 28 you bring out under the Modoc Job?

Witness: I believe it would be 90 per cent.

Examiner Frey: I mean in terms of what the highway you are building. [32]

Witness: Well, we are doing the clearing right-of-way, the grading, which is about 90 of the entire job in dollars and cents, and drainage, and a very little concrete. I guess about all. We are not doing any other

g. Trial Examiner Fry: Will the paving be done  
th under contract?

The Witness: Yes, sir.

yo Trial Examiner Fry: How wide a highway is  
it?

The Witness: Well, it is a standard two-lane  
highway. It is about 30 or 40 feet wide. It will  
be about 35 to 40 feet wide. [33]

A.

. . .

Q. Trial Examiner Fry: This is at my request.

worki information for my own purposes; since

Trial I am at the farm and I have got to get all the

project materials together for the benefit of the Board

The I might find it helpful if the record would

Trial show whether his construction was part of

The W system of that highway to others in the

Trial I have been looking for any official map or

Q. (1 map which might show those figures

join U. I saw the small map from the State of

branch California is a map from the State of Cali

A. Department of Public Works, Division of

Q. Highway District 2 includes Modoc

County, while State Highway No. 28 runs

along the river and you resume the stand? [51]

for I

ample after Recess

ss: If

miner Fry: The hearing was resumed, pur



order.

All right, proceed, Mr. Bamford.

Mr. Evans: You are reopening your case on the question of jurisdiction?

Mr. Bamford: No. I'm merely answering the Trial Examiner's request and am now in possession of two maps, one furnished by the Triple A, the other furnished by the State of California, Department of Public Works, Division of Highways.

Mr. Evans: Is this going in under your theory jurisdiction?

Trial Examiner Frey: This is at my request. I want the information for my own purposes; since I am the trier of the facts and I have got to get all pertinent facts together for the benefit of the jury. I feel that it might be helpful if the record should show what highway this construction was on and the relation of that highway to others in the area. That is why I asked for any official or semi-official map which might show those

Now, may I see the small map from the State of California? This is a map from the State of California, Department of Public Works, Division of Highways, District 2. District 2 includes Modoc County, through which State Highway No. 28 runs.

Mr. Guerin, would you resume the stand? [51-A]



(Testimony of Ed R. Guerin.)

Trial Examiner Frey: Will the paving be by another contractor?

The Witness: Yes, sir.

Trial Examiner Frey: How wide a highway is this?

The Witness: Well, it is a standard highway. It is about 30 or 40 feet wide. The average around 36 to 40 feet wide. [33]

\* \* \*

Trial Examiner Frey: This is at my request I want the information for my own purposes. I am the trier of the facts and I have got to get the pertinent facts together for the benefit of the jury. I feel that it might be helpful if the records show what highway this construction was on and the relation of that highway to other highways in the area. That is why I asked for any official or semi-official map which might show those highways.

Now, may I see the small map from the State of California? This is a map from the State of California, Department of Public Works, Division of Highways, District 2. District 2 includes San Diego County, through which State Highway No. 160 runs.

Mr. Guerin, would you resume the stand?

After Recess

(Whereupon, the hearing was resumed pursuant to the taking of the recess, at 3:30 p.m.)

Examiner Frey: The hearing will come to

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Trial E:  
by another  
The Wi  
Trial F:  
this?

The W  
highway  
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to the [52] map comprising

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hat

s. in't it?

es.

Frey Well, the Trial Examiner,  
this map, will receive it in evi-  
amin's Exhibit No. 1.

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\* \* \*

ED R. GUERIN

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ows:

Redirect examination

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miner Frey All right, proceed.

Mr. Bamfoe: Mr. Guerin, in July,

B. Guerin and Company requiring that

ees and specifically new employees en-

heavy duty mechanic work be cleared by

Engineers Local 3?

\*

resumed the stand and was examined and further as follows:

Cross-Examination  
(Continued)

Trial Examiner Frey: Since the Trial Examiner asked for this information, I will ask Mr. Evans some questions based on this map.

Trial Examiner Frey: I show you the map produced for the Trial Examiner by the Counsel, and ask you to indicate by pencil mark on it, as closely as you can, what part of the highway in Modoc County is being constructed by you. You can indicate it by a cut mark across the highway. Two cut marks across the highway.

Mr. Evans: Mr. Examiner, do you wish me to indicate that first introduced?

Trial Examiner Frey: Well, after it is marked, I will make it an Examiner's Exhibit.

All right, will you mark the map?

The Witness: Well, our job goes within one mile of Cedarville, I'd say about there. It comes back to, well, about here, I'd say. It's pretty small scale there.

Trial Examiner Frey: All right. Are the parties agreed that this map on the scale indicated is substantially accurate?

Mr. Evans: On the scale as shown there

mony of Ed R. Guerin.)

to be covered by the [52] map comprising  
2.

Evans: It is, isn't it?

Witness: What?

Evans: It is, isn't it?

Witness: Yes.

Examiner Frey: Well, the Trial Examiner,  
s called for this map, will receive it in evi-  
s Trial Examiner's Exhibit No. 1.

Thereupon the document above referred to  
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ED R. GUERIN

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Witness: Yes.

Examiner Frey: Well, the Trial Examiner,  
s called for this map, will receive it in evi-  
s Trial Examiner's Exhibit No. 1.

Thereupon the document above referred to  
s marked Trial Examiner's Exhibit No. 1  
identification and received in [53] evi-  
ce.)

\* \* \*

ED R. GUERIN

l the stand and was examined and testified  
as follows:

Redirect Examination

Bamford:

Examiner Frey: All right, proceed.

By Mr. Bamford): Mr. Guerin, in July,  
as R. B. Guerin and Company requiring that  
employees and specifically new employees en-  
or heavy duty mechanic work be cleared by  
ng Engineers Local 3?

\* \* \*

(Testimony of Ed R. Guerin.)

and it was up to the delegate—if a man go into the Union, if he wished to go in to clear him and I suppose through some arrangement that I don't know anything about—maybe a permit deal or maybe it was signing up a member of the Union, but we as contractors care whether they belonged to the Union. We always hire all the localities that we have account of living conditions. It was a time of the country, housing was scarce and we were lucky—that is, within reason—if a man was competent to hire local fellows.

\* \* \*

Q. (By Mr. Bamford): Mr. Guerin, I have what purports to be a letter from R. B. Guerin Company to the National Labor Relations Board dated July 28, 1949. Can you identify this letter, sir?

A. Yes, I signed it.

Q. This is a letter which was sent by your company to us? [61]

A. Yes.

Mr. Bamford: May it be marked, please, General Counsel's Exhibit next in order?

\* \* \*

(Thereupon the document above referred to was marked General Counsel's Exhibit for identification.)

\* \* \*

y of Ed R. Guerin.)

l paragraph of that letter. Will you read  
se?

urthermore"—is that it?

, sir.

—it is our understanding that we must  
nion members in good standing or those  
become affiliated with a Union or else  
Unions pull their members off the project.”  
ht. [62]

\* \* \*

y Mr. Bamford): Now, how do you square  
your statement that you weren't requiring  
employees to be approved by the Union?  
was up to the Union delegate to sign them  
ve them permits or ask them to join the  
nch happened in many cases up there.  
ening right now up there.

ll, was it your policy if the Union refused  
new employee that you would then refuse  
n or keep him on your pay roll?

was agreed when we went on the job that  
d clear anyone that was competent enough  
a job up there. I am talking about car-  
'catskinners or shovel crews or grease-  
or mechanics—any of the crafts that we  
ve to accomplish the job.

ll, on your part was it your agreement  
would employ only those who were cleared  
ion?

(Testimony of Ed R. Guerin.)

pull their regular members off? We had and fifty, two hundred people up there.

Q. Was this policy made known through operation to your supervisors?

A. Absolutely.

Q. Was the policy known to Lloyd Ma master mechanic? [63]

\* \* \*

Q. But what I am trying to get at, M is was it your policy and the policy of the that if the Union wouldn't clear a man would not hire him or not keep him in ployment? A. No, that was not the

Q. Again I direct your attention to this

A. I didn't write the letter, although it. I don't believe that was our general cause it didn't prove out that way. We starting the job along about that time.

Q. Did you read the letter before you Mr. Guerin?

A. I probably glanced through it. I it more now than I did when I signed it.

Q. Who did write the letter?

A. Our bookkeeper, George Perry.

Trial Examiner Frey: Who gave him to write it?

The Witness: Well, I think there was of a citation came in and it was all written

by of Ed R. Guerin.)

don't see anything wrong with it. We  
r contract up there, have a penalty for  
n and everything else and Number One  
e good help and plenty of help and [65]  
with anybody, Unions or anybody else.

y Mr. Bamford): How long have you  
e contracting business?

out 40 years. I will admit too long.

rior to 1949 had you, in the contracting  
ever done business with the Operating En-

y, I remember them before they were ever  
My oldest boy is a charter member of No.

\* \* \*

asn't it the usual arrangement between  
he Operating Engineers that if you hired  
n not through the Union but on your own  
man would join the Operating Engineers?  
s, ultimately. They were tickled to death  
t.

Examiner Frey: Did you ask them to or  
n to join under your old hiring and train-  
ices?

itness: No, we didn't care whether they  
not, but what are you going to do, Mr.  
e, when just for the sake of one individual  
a hundred men will walk off the job. That  
pleasant too you know. You can't swim

(Testimony of Ed R. Guerin.)  
Union; but it wasn't any of our business. I have never heard of a case where they had an opportunity to go in the Union and never heard of any case where they weren't to go in, so that would relieve us of any beef on it.

\* \* \*

Q. Wasn't it the understanding up there at the Cedarville job, Mr. Guerin, that all the heating mechanics had to belong to the Operating Engineers or else get cleared by them?

A. Get cleared, I will go for that, yes.

Trial Examiner Frey: What would you have done if some weren't cleared,

The Witness: Well, by gosh, I never heard of anybody that they wouldn't clear, the industry and we had no occasion to ever run anybody by my knowledge.

Trial Examiner Frey: You just said that it was your business you can't swim upstream and you can't afford to get in trouble with anybody, meeting the Union. What trouble are you referring to? Referring to their refusal to clear a man?

The Witness: I don't remember of them refusing them.

Trial Examiner Frey: What did you mean by that [67] statement you just made?

The Witness: Well, I believe he asked

Trial Examiner Frey: Now, wait. I

by of Ed R. Guerin.)

which the witness said, "In this business you  
up stream," and read that answer back  
ness.

answer read.)

Examiner Frey: Now, what did you mean  
answer?

Witness: You mean swimming upstream?

Examiner Frey: No, no. The previous  
that, in that answer. Read them to him

answer read.)

Examiner Frey: What did you mean by  
ment?

Witness: I meant this: In other words, I  
came about through asking me questions  
long I had been in the business, in the  
g business, and I said I was in before the  
t really heavy, and I believe in the last  
ar they came in very much to prominence,  
ally all of our jobs—we would like to have  
long peacefully and finish them on time,  
s why I meant we couldn't swim upstream.  
o go along with the trend.

Examiner Frey: You mean you had to do  
Unions wanted?

Witness: Pretty near.

Examiner Frey: Does that mean, then,  
were [68] afraid that if one individual



(Testimony of Ed R. Guerin.)

The Witness: Well, that is possible.

Trial Examiner Frey: Well, is that meant by that statement there?

The Witness: Yes, I will say that is meant, yes.

Trial Examiner Frey: All right. Proceed.

Q. (By Mr. Bamford): You testified, that this policy was known up on the job, the heavy duty mechanics had to be with the Engineers?

A. I believe there was times there was a hundred per cent; everybody was Union, laborers.

Q. I am asking what your policy was, many members there were up there. Wasn't that policy up there that everybody, all of you heavy duty mechanics and your operators, too, had to be organized with Local 3?

A. Well, sure.

Q. And that policy was made known to the supervisors, is that correct?

A. Certainly. They were all Union men.

Q. And your master mechanic, Lloyd, was a supervisor?

A. That is correct.

Trial Examiner Frey: Was he a Union man?

The Witness: Yes.

Mr. Bamford: No further questions—  
one more thing. Since this has been discussed at length, I should like [69] to offer GC 6 f

ly of Ed R. Guerin.)

examiner Frey: The objections are over-  
the letter marked as GC 6 for identifica-  
be admitted in evidence with the same

ne document heretofore marked General  
sel's Exhibit No. 6 for identification was  
red in evidence.)

---

GENERAL COUNSEL'S EXHIBIT No. 6

R. B. Guerin & Co.

and E. R. Guerin

General Contractors

P. O. Box 201

South San Francisco, California

July 28, 1949

ates of America,

Labor Relations Board,

on,

cisco, California.

Subject: Complaint—R. W. Spicher

at:

in receipt of your complaint filed by R. W.

resident of 1503 Austin St., Klamath

gon and beg to inform you that the state-

le by Mr. Spicher are erroneous and with-

ation as far as the liability of this com-

(Testimony of Ed R. Guerin.)

mechanic nor by any partner of the company. The company was informed personally by the business representative of Local No. 3, Operating Engineers of Redding that he could not work on the other project unless he was reinstated as a member in good standing. We were likely misled by this representative that we could not employ this man on the job in violation of our contract as agreed by the Associated General Contractors of America, Incorporated, of which we are a member. This Association represents all contractors in the area and negotiates all contracts with the Labor Union representing all types of crafts. Furthermore, we have a full understanding that we must employ union members in good standing or those willing to become members with a union or else have the unions remove our members off the project.

We wish to further state that, "no union rule practice was committed by the employer through the assistance of the union" as you state in your report of pertinent facts. We reiterate that the representative for the Operating Engineers is not responsible for this man's removal from the project.

It is felt that the demands made by the union for the re-instatement of Mr. Spicher is the personal responsibility of the Operating Engineers in it and no concern of this company.

As general contractors we are not employed by the Interstate Commerce and do not have any

ly of Ed R. Guerin.)

e a complaint against this firm instead of  
er party involved, the union, who is re-  
for his having been terminated.

Very truly yours,

/s/ E. R. GUERIN.

n]: G.C:6.

7/18/50.

GUERIN.

d Aug. 1, 1949, N.L.R.B.

ed July 18, 1950.

\* \* \*

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### Redirect Examination

amford:

l Mr. Martin have power to discharge em-

A. Yes.

\* \* \*

a witness called by and on behalf of the Counsel, being first duly sworn, was examined and testified as follows:

### Direct Examination

Trial Examiner Frey: Give the report your full name and address.

The Witness: Dick Spicher, 1503 Austine, Klamath Falls, Oregon.

Q. (By Mr. Bamford): Mr. Spicher, have you ever been employed by [72] R. B. Guerin and Company?

A. Yes.

Q. Are you employed there now?

Q. When did you first go to work for R. B. Guerin and Company?

A. Sometime in July of '49.

Q. Did you apply for the job with Guerin and Company?

A. No.

Q. How did you first hear of the job at Klamath Falls?

A. Well, there was a fellow that had been on this job, that used to live in the Falls. His name was [redacted], but he called my wife, referring to the job; wanted me to come on this job at Klamath Falls. Well, at the time I was working at Madras for the Warm Springs Lumber Company, so I had to call and find out the whole details, all about it. So she found out and then they called me. I quit up there and came down on the [redacted] job.

y of Dick W. Spicher.)

I went to Cedarville, speak to this fellow  
your wife?

. He called me the night that I got home  
aras and then the next morning this fellow  
Guerin office in Cedarville called me and  
know if I could get down there right  
re was a need of me, and I told him it  
probably around noon the following day.  
t a minute. In this conversation with the  
m [73] Guerin's office, was there anything  
Unions or clearance with Unions?

. I asked him about getting cleared with  
and he said I was already cleared. He  
me on down and go to work."

Q Did you go down then?           A. I did.

Q Did you work that day?

Q Was not the day I got there.

Q Did you work the next day?

Q The next day I went to work—that morning.

Q What was your job there?

Q Heavy duty mechanic.

Q What was your rate of pay?

Q \$21½.

Q Did you say you worked the next day after you

Q For work?           A. Yes, sir.

Q Who was your supervisor?

Q By Martin. [74]

(Testimony of Dick W. Spicher.)

A. No. I reported next morning to the master mechanic, Lloyd Martin, I wanted me to come back on the evening shift.

Q. Did you come back at 3:30?

A. I came back for the evening shift.

Q. Did you work that evening shift?

A. No.

Q. How did that happen?

A. The Business Agent from the U there——

Q. Just a minute. Do you know the Agent's name?

A. I believe it was Archibald, the na Business Agent.

Q. Had you met him before? A.

Q. Did he introduce himself? A.

Q. What Union was that, Mr. Spiche

A. It was Local 3.

A. The Operating Engineers? A.

Q. Did you have a conversation with M bald, if that [75] was his name?

A. Yes, a short one.

\* \* \*

Q. (By Mr. Bamford): Now, where conversation take place?

A. It took place just outside the shop d in Cedarville.

Q. Was anyone else present within e



by of Dick W. Spicher.)

ell, Lloyd Martin was inside there.

fore the conversation ended between you  
bald, did Martin join the conversation?

he just came up——

l he come within earshot during the con-

? A. Come where?

l he come within earshot while you were  
th Archibald?

s, I will say he was. [76]

ll you tell me what was said and by whom  
nversation, please? [77]

\* \* \*

tness: Archibald came up and said to me,  
if I had my book and clearance and I said,  
have my book with me and they cleared  
gh the office here.”

y Mr. Bamford): What did Archibald

chibald asked Lloyd Martin there if he  
clearance.

d Martin come up after that conversation?

ht then he came up and Martin says,  
nd he stood there awhile and Archibald  
ere is nothing I can do for you, then,”

ys he had men down there in the Local  
r a job to take my place, so I asked him  
ey wanted me to work that night and  
says, “Can you get along without him?”

(Testimony of Dick W. Spicher.)  
said, "Well," he said, "I guess I can't then," so they got in their car and went the road. I don't know where they went

Q. At that point did your employment with R. B. Guerin? A. Yes.

Q. Did you leave their premises?

A. Yes. [79]

Q. And you didn't work that night?

A. Didn't work that night.

Mr. Bamford: Mr. Examiner, for the of establishing dates, Counsel are prepared late that the day that Mr. Spicher worked 7 and the day he was terminated was Jul

Trial Examiner Frey: The record will

Mr. Evans: So stipulated.

\* \* \*

### Cross-Examination

By Mr. Evans:

Q. Well, you tell us, Mr. Spicher, that called up your wife that had a couple of car job and told her there was a job over the

A. Yes.

Q. Do you know if he said he was connected in any way with Guerin Brothers or R. E. Company?

A. He had two cats on the job, yes.

Q. What capacity, did he tell you?

A. I believe it was clearing

ny of Dick W. Spicher.)

w, I wouldn't say.

ll, the fact of the matter is the man's

Murien, [80] wasn't it?

elieve it was.

at's right, and he was a sub-contractor on

o there with a man by the name of Cox?

s.

nning a couple of cats?

ll, I don't know if his name was Cox. I

had a couple of cats.

ll, Murien was the man that talked to your

elieve that was his name, Murien.

en you got on the job you found out he

-contractor for Guerin, didn't you?

on't know if I found out he was a sub-

or not. There was nothing ever said to

that.

at did you see him doing when you got

?

\* \* \*

tness: He was there in the shop—— [81]

\* \* \*

xaminer Frey: Read it back to him, what

to say.

uestion and answer read.)

tness: That's right, he was there in the

I got there

(Testimony of Dick W. Spicher.)

A. No.

Q. Had you known Mr. Murien before  
out there on that job? A. No.

Q. Do you know why he would have  
up regarding this work?

A. From a friend that he knew the  
Falls that used to work with me at C. A.  
contractor there in the Falls.

Q. In other words, you didn't know  
all? A. No, I didn't.

Q. And some friend of his knew about  
and called him? A. Yes.

Q. And he in turn called you?

A. Yes. [82]

\* \* \*

Q. Did you ever talk to Murien hims  
your wife do all the conversing? A.

Q. When you conversed with Murien,  
did he not tell you that this job was off  
friend of his and he suggested you go  
apply for it? A. No.

Q. He didn't tell you that? A.

Q. Now, you tell us that after you  
Murien and asked him about the condi  
the salary and so forth out there some  
Guerin's office called you? A. That

Q. Do you remember what that ma  
was? [83] A. No.

Q. Did he tell you what his position

ny of Dick W. Spicher.)

ell, he was in the office when he handed  
ard to sign when I first went in there.

\* \* \*

u say he telephoned to you, is that correct?  
at was the morning I went down there. He  
d me and that was the same guy that  
ne this card at the Guerin office at Cedar-  
had me sign it.

d he tell you he was the man who had tele-  
ou? A. Yes.

you have that card he gave you?

, they kept the card.

you don't know what that man's name  
A. No.

as it any of the Guerins; there is Mr. Rob-  
erin, sitting here, Mr. E. R. Guerin, who  
or Mr. Martin? A. Neither one.

you don't know who he was?

d what did you——

Examiner Frey: Do you know what he  
the card after you signed it?

itness: Put it back in his file with the  
e [84] cards. All he done——

Examiner Frey: Did you see him put it in

itness: Yes. All he done was hand it to  
ned it and he put it back in the file.

(Testimony of Dick W. Spicher.)  
you introduce yourself to this man or how  
make yourself known to him?

A. I introduced myself to him.

Q. And you told him you were Spicher.

A. Yes.

Q. Did you tell him you were a heavy  
mechanic? A. I did.

Q. And you were a heavy duty mechanic  
time? A. Yes.

Q. And you had experience before in  
that type? A. I had.

Q. With cats and jeeps?

A. Cats and shovels and all.

Q. And with jeeps? A. Yes, jeeps.

Q. Well, about how much experience  
had at the time you applied for this work?

A. Well, around approximately 16 years.

Q. About 16 years; can you give us some  
where that [85] experience was gained,  
employers?

A. Well, there is six and a half years  
Dunn, a contractor in Klamath Falls; then  
years at General Motors at Klamath Falls  
Corporation, General Motors dealer; and  
year and a half in at Morris and Knutson  
don't know just how much time at Butler  
tion out at Spokane.

Q. Well, now, let us go back to when  
with Dunn. What were your specific duties

by of Dick W. Spicher.)

heavy duty mechanic. The last year there I  
er mechanic, the last two years.

and what type of operation did he have,  
k did he do?

Well, the last two years we were building  
down here in California at Weitchpec,  
River.

Building a bridge? A. Yes.

Now, in those operations how many cats were  
you remember?

Well, himself, he had only eight; then there  
were several rented.

And you were in charge of the repairing of  
ment?

repairing—not all the time that I was in  
D.

Examiner Frey: This is on the Dunn job?

Witness: Yes.

Examiner Frey: At the bridge? [86]

Witness: Yes. Well, on the bridge job I was  
of all of it, yes.

by Mr. Evans): And you say he had eight  
ne? A. Yes.

and rented others? A. Yes.

and you were in charge of the repair work  
A. Yes.

Now, what type of cats were those—Cater-

A. They were all cats. [87]



(Testimony of Dick W. Spicher.)

Q. And they told you to come back morning and go to work? A. Yes.

\* \* \*

Q. Or about a clearance either?

Q. So he said, "Come back and work shift"? And when you went back to work shift you found Mr. Archibald, I believe fired, from the Union there?

A. That's right.

Q. And now, you related in substance conversation that [90] was held between you and Mr. Archibald at that time in your direct testimony? A. Yes.

Q. Well, how did you know Mr. Archibald? How did he know you at that time? Did he introduce himself to him or did he introduce himself to you?

A. He introduced himself to me and I introduced myself to him.

Q. You walked right up and saw this man and knew that was Mr. Archibald?

Q. How did you know him?

A. He introduced himself as a Business Representative, as Archibald.

Q. Did he say he knew you?

A. No, he didn't know me.

Q. How did he know that you were S.

A. I told him my name. Then he asked

by of Dick W. Spicher.)

Who else was standing there when you first  
met Mr. Archibald? A. Lloyd Martin.

Did Mr. Martin introduce you to him?

Well, I wouldn't say that he did. I don't  
know at that time whether he did or not. [91]

Well, then let me ask you this: Who spoke  
first to Mr. Archibald? A. Archibald.

What did he say?

Well, the first thing he asked me my name,  
and then he introduced himself as Archi-  
bald and he introduced him-  
self to me. He said my name and he introduced him-  
self as Archibald.

Was Mr. Martin standing there at that time?

Mr. Martin wasn't right there at the minute, no.

Right. Well, now, when he said, "I am

Archibald," and asked you your name, what did he

say to you and what did you say to him? I

remembered to have the conversation just as it was.

He asked me if I had my Union book and

showed it for this job and I said, "I don't have no

book with me," and I said, "They cleared

the office here."

What did he say to you?

Well, he asked Lloyd Martin if he knowed it.

Well, had Martin come back in in the mean-

A. Martin came up about that time.

He asked Martin if he "knowed" it, and

he said by Mr. Archibald to you and

and said by you to Mr. Archibald?

(Testimony of Dick W. Spicher.)

Q. Just that is all he said? [92]

A. That's right.

Q. When you said you didn't have a  
you had been cleared through the office  
said to you he can't do anything for you?

A. He said, "I can't do anything for  
said, "I got men at the Local waiting for  
job."

\* \* \*

Trial Examiner Frey: What are the d  
heavy duty mechanic?

The Witness: Well, all major overhaul  
pairs.

Trial Examiner Frey: On what?

The Witness: On all types.

Trial Examiner Frey: Of what?

The Witness: Cats, shovels, trucks and

Trial Examiner Frey: Have you perfo  
work on all those types of equipment d  
sixteen years of your experience?

The Witness: No, not on all types, no

Trial Examiner Frey: Well, have  
formed the heavy duty mechanic work on  
type during the sixteen years?

The Witness: Well, yes.

Trial Examiner Frey: Which one?

The Witness: On the cats, overhauled  
overhauled the feed-link-belt-shovels, grad

Trial Examiner Frey: You have done

y of Dick W. Spicher.)

itness: Yes.

Examiner Frey: And in that overhaul  
t parts of the equipment do you work on?

itness: In the overhaul work?

Examiner Frey: Any overhaul work.

itness: Well, final drives, transmissions,  
[124] motors.

Examiner Frey: Do you have to have any  
nowledge in overhauling a transmission,  
upon how many forward and reverse  
t a transmission has?

itness: Well, I suppose so, but you most  
get a book to go by there, on tearing it  
putting it together. I wouldn't say you  
e to have too much knowledge.

Examiner Frey: I suppose you had a  
r tractor which had a transmission some-  
an ordinary automobile transmission, with  
forward speeds and one reverse, and you  
to tear down and repair and overhaul that  
on. Would you have to have any more  
nowledge or any special training in order  
wn a transmission on a D7 tractor which  
orward speeds and four reverses?

itness: No, not if I tore it down, you

Examiner Frey: How about repair and  
n of replacement parts in it?

itness: How about what?

(Testimony of Dick W. Spicher.)  
place any parts in a transmission on a  
than you would have to have in an ordin  
speed forward and one-speed reverse tran

The Witness: Yes, you would have  
little. [125]

Trial Examiner Frey: You say that  
three working years, three years workin  
General Motors dealer?

The Witness: General Motors.

Trial Examiner Frey: What was the  
that dealer?

The Witness: West Hitchcock. I p  
myself in that, eighteen months.

Trial Examiner Frey: On what wor

The Witness: Major motor overhauls

Trial Examiner Frey: You mean  
Motors diesel tractors?

The Witness: Motors, yes.

Trial Examiner Frey: And the other  
a half you worked where?

The Witness: I worked for myself.

Trial Examiner Frey: Doing the same

The Witness: Doing the same work.

Trial Examiner Frey: During that th  
did you work on just diesel tractors?

The Witness: No, no.

Trial Examiner Frey: On what else?

The Witness: On cars and trucks, ri

with the rest of it

by of Dick W. Spicher.)

uring the year and a half with Morrison—  
ne other name?

itness: Knudsen. [126]

xaminer Frey: Morrison-Knudsen.

itness: Working on trucks, cats and  
epairing them.

xaminer Frey: How about your work for  
onstruction Company?

itness: Well, working on trucks, and so  
as the same thing.

xaminer Frey: How long did you work  
?

itness: I don't know just how long I did  
Butler Construction.

xaminer Frey: Was that after Morrison-  
?

itness: Yes. [127]

\* \* \*

xaminer Frey: General Counsel rests?

mford: Yes. [130]

\* \* \*

ED R. GUERIN

a witness by and on behalf of the Re-  
, having been previously duly sworn, was  
and testified further as follows:

Direct Examination

vans:



(Testimony of Ed R. Guerin.)

Q. And you have testified? A. Y

Q. Now, Mr. Guerin, will you state the  
stances of your own personal knowledge  
to the hiring of Mr. Spicher by R. B. G  
Company on the Modoc job?

Just tell us how and in what manner he  
employed by your company.

A. Well, we were overhauling a "Ca  
sub-contractor by the name of Murien, an  
criticizing a mechanic that was working  
time. He said, "I will get you a good  
from Klamath Falls."

And I said, "There is the phone. Get h

I said, "We are just starting the job a  
got a good mechanic, get him over here."

So, two or three days later, Murien cam  
and Mr. Spicher was working on this ca  
said, "Where in the heck did you get that

And I said, "Well, by gosh, that is a  
you ordered from Klamath Falls."

He says, "Like heck I did. I never sav  
fore."

So I said, "Let's go up and talk to hin

So we went up and we asked what he w  
what his name was and he told us. And  
Mr. Spicher where—now, I don't know an  
remember what this other mechanic's nam  
he said, "Where is Joe Bloke?" [132]

I know that is not his name "Well "



ny of Ed R. Guerin.)

that is all I know about those circum-  
[133]

\* \* \*

### Cross-Examination

Bamford: [135]

\* \* \*

w, you said, I believe, that General Coun-  
or identification—I mean General Coun-  
the letter signed by you on the date of  
1949, was in fact prepared by Mr. Perry,  
orrect? A. That is right.

d he prepare it and did you sign it at  
e? A. Yes.

. Perry was your bookkeeper on that job,  
orrect? A. Yes.

Mr. Perry still in your employ?  
, he isn't.

hen did he leave your employ?

ell, I think around the 15th or 20th of De-  
f last year. That is when we shut down  
winter.

w long had he been working for you at the  
uit or at the time he was terminated?  
believe he started at the time we began the  
nd the tenth or 15th of June.

ot too clear, but when we started the job,  
it was around the middle of June or some-  
where.

(Testimony of Ed R. Guerin.)  
charge that [136] was filed on behalf of Mr  
is that correct.

A. Yes. There was some notice. He just  
it to me and I said, "Well," and he wrote  
letter.

I don't know, but it seemed to me that  
some governmental or official document  
sort.

Q. Mr. Guerin, I have here what purports  
a copy of a letter from the Twentieth  
NLRB, to R. B. Guerin and Company, undated  
of August 25, 1949.

Will you examine the letter, please?

A. Yes, I believe it was a letter somewhat  
that. It seems familiar. Yes, I think I know  
that.

Mr. Bamford: With your permission, I  
would just like to read the letter in. It is  
short.

Mr. Evans: You can introduce it in. I  
maybe the Examiner and the Board would  
have it in. Introduce it in evidence and  
can read it, if you want to. I am just making  
suggestion. I am not trying to make you  
Either way you want to do it.

Mr. Bamford: I would prefer just to read it.  
It is a standard letter. I have already  
the sender and the address and the date. The  
reads:

lemen:

his will inform you that a charge has been  
n the above-entitled case. A copy is en-  
. Also enclosed are two copies of an In-  
te Commerce form. [137] Please fill in  
return one copy and retain the other for  
file.

ne investigation of this case has been as-  
l to Field Examiner Albert Schneider,  
will contact you in the course of the in-  
ation. In the meantime, please submit  
s office your version of the matters of the  
e.

ery truly yours, Gerald A. Brown, Re-  
Director."

Mr. Bamford): Now, your memory is,  
it was in response to this letter, that you  
r letter? A. I believe so.

July 28th?

. Yes, it seems to be in sequence all right.

ns: That was July 25th, wasn't it?

nford: Yes.

Mr. Bamford): And I take it that you  
ur letter over to Perry and asked him to  
is that correct? A. Yes. [138]

\* \* \*

xaminer Frey: Just a minute. I refer

(Testimony of Ed R. Guerin.)

Trial Examiner Frey: After Spicher as you testified, how he came to be there was anything further said by Muriel?

The Witness: Well, we were overhauled "cat" on a cost basis and he was quite some of the mechanics and, if I remember the cat was all tore apart and we were a little trouble getting help to put it back and he was a pretty fussy bird.

In other words, he was really paying for it. I believe he suggested running a couple of fellows off. We had a case of another slow. He was a very good mechanic on trucks and mobiles, but as a "cat" mechanic, we found he wasn't.

But we always had the policy to give them a chance. At that time I don't believe that cars and trucks had gotten in on the job. Well, he might be a specialist on one line, he might be a dandy truck mechanic or automobile mechanic, but you can't put those fellows on to a D7. [

\* \* \*

LLOYD E. MARTIN

called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Evans:

y of Lloyd E. Martin)

tness: Lloyd E. Martin, 116 Granada  
an Francisco.

Mr. Evans): Mr. Martin, by whom are  
ved at the [143] present time?

regular, most of the time with R. B.  
l Company.

\* \* \*

were the master mechanic on the Modoc  
B. Guerin and Company, were you not?

t is right.

you know Mr. Spicher here, who has pre-  
tified? [144]

w him on a job.

l, now, did you hire him on the job?

sir.

re you on the job, when he came on?

n't remember whether I was right at the

t, when he came on.

l, did you see him when he came on to the

w that first evening, I believe, some time.

y, where did you see him?

king on Murien's cat.

o else was present at that time, when you

A. I don't remember that.

you have a conversation with him?

on't recall that I did, because I didn't

(Testimony of Lloyd E. Martin)

Q. Did you see the work that he was doing at that time?

A. Yes, sir. I checked up on it.

Q. Now, from what you saw there and what he was doing, would you say that he was a qualified heavy duty mechanic?

A. Decidedly not.

Q. Did he seem to know what he was doing in connection with the work that he was working on?

A. Some parts you see, he was doing. On other parts he showed not to be up to par.

\* \* \*

Q. You were in Court yesterday, Mr. Spicher testified, were you not, regarding your conversation with himself and Archibald?

A. Yes.

Q. Now, will you tell us whether or not you were present during that conversation?

A. I was in the shop, I believe. I was not present at the time of it.

Q. Did you hear any of the conversation between Mr. Spicher and Archibald?

A. Never heard a word of it. [147]

\* \* \*

Q. Did you ever discharge Mr. Spicher?

A. No, sir.

Q. Did you ever tell Mr. Spicher that you would not use him on the job?

ny of Lloyd E. Martin)

re him and I didn't feel like it was my place  
m. [148]

\* \* \*

ow, as the master mechanic on the job, you  
ne help, didn't you?

ired some of the help, yes.

as all the help that you hired union help?  
ot necessarily, no.

\* \* \*

ans: Answer the question yes or no. [149]

Examiner Frey: What do you mean by  
ecessarily"? No?

Witness: They hired a big percentage of  
n help, that the union said they would clear  
e had a blanket order that we had, Ed did,  
would clear anybody that wanted to work  
ecause help was scarce. Back in that dis-  
as scarce.

Examiner Frey: Well, was it the under-  
that they would join the union later?

Witness: There was nothing said about  
the union man would show up every so  
d clear those that we had put to work.

Examiner Frey: Did he ever refuse to  
body?

Witness: Just this one instance.

Examiner Frey: How did you find out  
t?



(Testimony of Lloyd E. Martin)  
Trial Examiner Frey: Who told you  
office?

The Witness: I believe George Perry told

Trial Examiner Frey: That he refused  
him?

The Witness: That they refused to call  
him.

\* \* \*

### Cross-Examination

By Mr. Bamford:

Q. How long have you known Mr. Archibald?

A. Well, at that time I hadn't known him  
about thirty days.

Q. Where did you first meet him?

A. I met him sometime in June on the ship. He  
came up and introduced himself as the agent. He was  
working out of Redding. I was working out of San Francisco,  
and that is the first time I hadn't met him.

Q. Could you describe the conversation with Archibald  
at that time, please.

A. Well, he came to me and he said, "You are a  
man that is not a union man working." And he said,  
"Who is he?"

And he told me, and I said, "Well, to the best of  
my knowledge, he is a union man. I didn't know who he  
was, so I don't know. I don't know anything about him."

Q. Was he talking about Spicher at that time?

A. He was talking about Mr. Spicher.

ny of Lloyd E. Martin)

and was this the same day that you saw  
l and Spicher in conversation later?

believe it was.

at you are not positive on that, is that cor-

A. I think it was, yes.

is same day? A. This same day.

at you hadn't met Archibald before the day  
her left the employ of R. B. Guerin and  
?

don't recall if that was his first trip out on  
I got there June the 12th, and I don't re-  
her that was his first trip out or not.

perhaps this will refresh your memory, if I  
it has been stipulated by counsel that Mr.  
reported for work on July 6th and actually  
n July 7th and that this conversation be-  
chibald and Spicher occurred on July the

t would presumably be on July 8th when  
and Archibald had this conversation, and  
t know if that then was the first day that  
met Archibald?

don't recall that I had met him before that  
t, that that was his first trip, because I had  
here June the 12th, I believe it was, some-  
ng in there, and he only made a trip out  
ut once a month. [152]

ee. Did Archibald say how he knew that

(Testimony of Lloyd E. Martin)

Q. And you replied, you said, that you know that he hadn't been a member?

A. I said I didn't know that we had that wasn't union. That is all I said.

Q. Where did this conversation take

A. I believe it was in Cedarville.

Q. And whereabouts in Cedarville?

A. Down at the shop.

Q. And——

A. Or near the shop. Somewhere around

Q. Do you remember what time of day it was?  
A. I wouldn't recall that.

Q. Well, how soon did it occur before Archibald and Spicher talking?

A. Oh, I would judge a couple of hours or something like that.

Q. And it was at the shop that this testimony is that correct?

A. Down near the shop, I would say. I don't remember whether it was in the shop or not where. [153]

\* \* \*

Q. Well, what was the usual procedure in dealing with these men?

A. Well, Red Hester said to put another man to work that looked like they would make a good

Q. That was Archibald's boss?

A. That was Archibald's boss.

Q. Yes.

by of Lloyd E. Martin)

go to work and give them a chance. And  
always been Mr. Guerin's attitude also, to  
e breaks to anybody like that.

it was part of the understanding, wasn't  
they would have to get a permit from the  
oin the union?

ll, it is customary to sign up in ninety  
hink that the law does say something like  
you can work on the job ninety days and  
is a union job, so-called union job, then  
up.

ll, do you think, as you considered this  
o you think that Spicher ran into trouble  
e wasn't a local man and that is why he  
et cleared?

wasn't a capable mechanic.

you discuss that with Archibald?

on't recall if I mentioned that or not. I  
y remember.

ll, then, how was it that he couldn't get  
cause he wasn't a capable mechanic, if you  
uss it with [162] Archibald?

ns: If he knows.

r Mr. Bamford): If you know, of course.  
ouldn't say.

any occasion did you hire a man outside  
area, who wasn't a member of the Engi-

n't recall that we hired any from way off

(Testimony of Lloyd E. Martin)  
that would fit into that category, is that

A. Well, he was one that you might  
He came in from Oregon, which was a lit  
away than what we would call local men.

Q. What would you call local men? How  
around in Cedarville?

A. Right around the city, so that they  
have any housing problems. [163]

\* \* \*

Q. (By Mr. Bamford): Now, what  
mean by "we had a blanket order from

A. Well, Hester came down there  
"Help is hard to get, and you pick up an  
want and we will clear them." That is wh  
in the nature of a blanket order.

Q. That was the agreement between H  
the company?

A. That was just a conversation.

Q. Who was there, you and Mr. Guer

A. Yes.

Trial Examiner Frey: Was that the  
the arrangement you had in effect at  
Spicher came on the job?

The Witness: It had always been t  
way.

\* \* \*

Q. (By Mr. Bamford): Now, I belie  
tified that you saw Mr. Spicher workin

y of Lloyd E. Martin)

at time of day was this?

ll, he was working there the biggest part  
that first day.

l did you stand around and watch him?

ould come by once in a while to check up.

you have occasion to talk to Mr. Spicher  
s time?

on't believe I had any conversation with

just watched him work, or did you talk  
en?

d no words with Murien. [165]

\* \* \*

w long total do you think that you spent  
Spicher work?

l, I didn't have much time to stand  
d watch anything. I had to go over the  
ead, which was about eight miles and I  
ch time except to come by once in a while  
up and see how things were going.

Spicher was making mistakes, was he?  
l, he wasn't doing the work in what you  
a workmanlike manner.

l, could you be a little bit more specific  
?

l, the work was not first class.

result or the way he was working or

A. Methods.



(Testimony of Lloyd E. Martin)

A. Well, the manner in which he worked like a heavy duty mechanic.

Q. But you didn't speak to him about

A. I had nothing——

Q. Or show him how to do it?

A. I didn't say anything to him.

Trial Examiner Frey: Why didn't

The Witness: Well, that was not the way to go around and comment on their work.

Trial Examiner Frey. Well, did you see the Guerin and [166] Company was paying for a pair of this cat?

A. I never was familiar with any of those business deals. I was merely a mechanic, chief.

Trial Examiner Frey: If you saw him doing the job properly along the mechanical which you had the jurisdiction, didn't you say anything to him about it?

The Witness: If you could see that he was green at the work, you wouldn't say anything. He would just disregard it and——

Trial Examiner Frey: And what?

The Witness: Just let it go until some other time.

Trial Examiner Frey: What would you say in the future time?

The Witness: Well, at the end of the trial, I would say we didn't need him any more.

Trial Examiner Frey: Did you find



ny of Lloyd E. Martin)

n phases of it that would have been all

Examiner Frey: What phases do you think  
do, on your observation of what he was

itness: He would be what you would call  
field man, and not a mechanic.

Examiner Frey: What is the difference be-  
eld man and a mechanic?

itness: A field man takes care of the  
d [167] work like that, just adjusts power  
clutches, minor stuff like that.

Examiner Frey: And what did you base  
tusion on?

itness: Well, just different things that he  
g.

Examiner Frey: Tell me what they were.

itness: I don't recall what he was doing,

Examiner Frey: You don't recall what he  
g?

itness: You know, only just working on

Examiner Frey: What was he doing on the

itness: Well, we were putting final drives  
s and links, things like that on there, but I  
ow what part he was working on, when I  
ing him

The Witness: Just working on some work that I mentioned.

Trial Examiner Frey: Well, what is it you now to say that the man was not working on that cat?

The Witness: Well, I can watch a man whether he is capable.

Trial Examiner Frey: Well, you watched that day, didn't you?

The Witness: Yes.

Trial Examiner Frey: Now, what is it work that [168] led you to believe that I qualified to do the work?

The Witness: Well, I just can't remember a particular part that he was working on. It's about the final drives, I believe.

Trial Examiner Frey: What was he doing on the final drives?

The Witness: Well, we were putting new parts on the final drives and just adjusting them and one thing or another.

Trial Examiner Frey: What was wrong about that, do you know?

The Witness: I couldn't really say just what he was working on, really. It has just been a long time ago.

Trial Examiner Frey: Did you watch him handling his tools?

The Witness: Well, yes, a little.

y of Lloyd E. Martin)

ten or fifteen minutes and then I had to go  
places.

Examiner Frey. Did you stand watching  
ten minutes?

Witness: No, I didn't, not ten minutes at a

Examiner Frey: You just passed by, is

Witness: Passed by, more or less, a few

Examiner Frey: Never spoke to him about  
as doing? [169]

Witness: No, sir, I never talked to him.

Examiner Frey: Well, how was he han-  
tools?

Witness: Well, I don't recall any certain  
ere that would—any workman can look at  
orkman and in just a few minutes they can  
y know what they are doing or not.

Examiner Frey: Well, can't you describe  
was doing which indicated to you that he  
alified to do the work or wasn't handling  
right?

Witness: No, sir, I couldn't recall. It has  
ong.

Examiner Frey: All right, proceed. [170]

\* \* \*

ans: For the purpose of the record, I will

Trial Examiner Frey: I think that  
stood. [172]

\* \* \*

## DICK W. SPICHER

recalled as a witness by and on behalf of  
eral Counsel, having been previously du  
was examined and testified further as fo

### Direct Examination

By Mr. Bamford:

Q. Mr. Spicher, I believe you testified  
examination that your wife called you at  
up at Madras and told you that someone  
from Cedarville about this job, and that  
your wife to call back, and she reported  
did call back, and then you went down to  
Falls, is that correct? A. That is

Q. And while you were at Klamath  
night, this fellow from Cedarville called  
that correct? A. That is correct.

Q. And wanted to know when you we  
down? A. That is right.

Q. Now, who was this fellow that calle  
know?

A. Well, I don't recall his name. It se  
like it was Murien.

Q. You are not sure of that?

A. I am not sure of it, no.

Q. Did you know Murien?

y of Dick W. Spicher.)

no. I am not [174] personally acquainted

have never met him? A. No.

our conversation with Murien, did he in-

it was that he had known about you?

he did. [175]

\* \* \*

Mr. Bamford): I believe the last ques-

How did Murien know about you?

l, he knew about me, he remembered me.

ard Ellis, he used to work for him.

is: What was his name?

ness: I believe his name was Meinard  
skinner.

Mr. Bamford): Where did you know

used to work for this Dunne Construction.

say that he was a cat skinner?

skinner.

long did he work for Dunne?

ould say two, two and a half, or three

your knowledge, was he a heavy duty

A. No. He was just an operator.

ieve you testified also that when you re-

work the next day, that you saw Murien,

ect? A. Correct. [176]

t was the conversation between you and

(Testimony of Dick W. Spicher.)

The Witness: Well, Murien said, "W  
you been all this time?" [177]

\* \* \*

Q. (By Mr. Bamford): What did you

A. Well, I don't recall what I replied  
to "come in here and get signed up a  
work."

Q. Did he recognize you by sight?

A. Yes.

Q. Did you recognize him by sight?

A. Yes, I did.

Q. But you had never met?

A. No, I was never introduced to hi  
seen the man.

Q. Do you know what his first name w

A. No, I can't say as I do.

Q. You actually worked only one day  
that correct?

A. That is correct.

Q. Now, during any time of that da  
work in the shop at Cedarville?

A.

Q. Will you describe what you did the

A. Well, we worked out on the job. I  
that it was around three and half to four  
the shop at Cedarville, approximately.

Q. Did you report to the job site or d  
port to the shop?

A. I reported to the shop early in the

Q. And what happened at that time?

y of Dick W. Spicher.)

ich you did? A. Which I did.

you work on that cat all day?

I worked on it for a while and then I

he points on another cat, on a 'dozer?

s that cat near by the first cat?

was near by the first cat, yes, and I think

s close to noon. Then we went on down

he left hand side of the road, going out of

to the rest of the cats, and put on some

ls.

y did you get down there, further down?

ent down there with the welder and the

anics.

you walk down or drive down?

e down. They had a pickup.

. they picked up your tools?

y picked up my tools and rode on down

of the cats. [179]

\* \* \*

Mr. Bamford): During the day that

d out on the road, did you observe Mr.

tching your work? A. No, sir.

you have any occasion to talk with Mr.

t day? A. I did not.

you at any time you were employed by

in, did you talk with Mr. Guerin, Senior,

pany of Murien?

d not. [181]



Cross-Examination

By Mr. Evans:

Q. Mr. Spicher, you say that Murien  
“Where have you been?” A. Yes.

Q. And he said, “Well, come on, go to  
A. Yes.

Q. He hired you, didn’t he? A.

Q. Well, he said, “Come on and go to

A. Well, he took me in the office to get

Q. And what did he say to the man in  
when he took you in there?

A. He told the man in the office that  
Spicher, the mechanic,” and this fellow is  
—I don’t recall his name. I believe they  
the day I went to work there. He said,

So we got the card and signed me up  
handed me the card and said, “Sign this.  
it and gave him the card back.

Q. You knew that Murien was mere  
contractor on the job, didn’t you?

A. No, I didn’t.

Q. You know that now, don’t you?

A. No. I don’t know as I do.

Q. Do you know of your own know  
he was employed by [182] Guerin and Co

A. He was down there at Ed Guerin  
the job, with a couple of cats. I didn’t  
was subject to Guerin or renting the

ly of Dick W. Spicher.)

was the one that called you to go down  
go to work?

was the one that called me in Klamath  
e in town.

\* \* \*

ED. R. GUERIN

s a witness by and on behalf of the Re-  
having been first previously sworn, was  
and testified as follows:

Direct Examination

vans:

Guerin, who was Mr. Murien?  
and a fellow named Cox were sub-con-  
ne clearing on the job.  
s he employed by Guerin in any other ca-  
er than as a sub-contractor? [183]

\* \* \*

y Mr. Evans): Was he ever authorized  
yone on behalf of Guerin and Company?

ans: That is all.

xaminer Frey: What kind of a sub-con-  
rou have with them?

itness: Well, we had, I believe ninety  
clearing and he and Cox "subbed" that  
earing.

(Testimony of Ed. R. Guerin)  
into a contract with us for a certain amount  
of money per acre, under the same specifications  
that we did for it to the California Highways  
Commission.

Trial Examiner Frey: Now, did you make  
special arrangement with him about the main-  
tenance of his cats?

The Witness: Only this one cat. It came  
in job in terrible shape and he asked us to do  
with our mechanics.

Trial Examiner Frey: With your mechanics?

The Witness: Yes, and we arranged for  
and the necessary parts and everything. We  
those and then charged it back against him  
as an offset.

Trial Examiner Frey: And the work  
Spicher started [184] to do was on that cat,  
correct?

The Witness: Yes.

Trial Examiner Frey: He was working on  
then, working on that cat, is that right?

The Witness: That is right.

I understand now, if I could qualify to  
understand, you understand, we, in turn, would  
what he had coming on his estimate of charges  
what labor was performed on his cat.

Trial Examiner Frey: That is right.  
what I understood you to say. In other words,  
you took one of your men—in this case, the

by of Ed. R. Guerin)

Whatever it was per hour, would be charged

Curien, is that correct?

Witness: That is right. [185]

\* \* \*

Amford: Let the record show that the par-  
tate that on September 21, 1949, Respond-  
e an unconditional offer of reinstatement to  
Spicher by way of a letter mailed on Sep-  
t from San Francisco to Mr. Spicher's  
Klamath Falls, Oregon.

Ans: Upon the recommendation of Brad-  
ls, the Field Examiner of the NLRB.

Amford: As amended, the stipulation is  
ry.

Ans: It is satisfactory to the Respondents.

Examiner Frey: Do both sides now rest?

Ans: Respondent rests.

Amford: Yes.

Examiner Frey: Does General Counsel

Amford: Yes. [187]

\* \* \*

d July 31, 1950.

NATIONAL LABOR RELATIONS BOARD  
Petitioner

vs.

ROBERT S. GUERIN, RAYBURN B.  
and ED. R. GUERIN, Individually and  
Partners, d/b/a R. B. GUERIN  
COMPANY, General Contractors,  
Respondent

CERTIFICATE OF THE NATIONAL  
LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary duly authorized by 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "In the Matter of Robert S. Guerin, Rayburn B. Guerin and Edward R. Guerin, individually and as co-partners, d/b/a R. B. Guerin & Company, General Contractors, and W. Spicher, an individual," the same being designated as Case No. 20-CA-274 before said Board, said transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

enumerated, said documents attached hereto  
ows:

S. Hawkins' (charging party's representative, addressed to Examining Officer concerning pertinent facts concerning the charge, re-  
y 25, 1949.

Order designating Eugene F. Frey Trial  
for the National Labor Relations Board,  
r 18, 1950.

enographic transcript of testimony taken  
ial Examiner Frey on July 18 and 19,  
ther with all exhibits introduced in evi-

ipulation of the parties to correct the rec-  
August 8, 1950.

py of Trial Examiner's Intermediate Re-  
l September 27, 1950, (annexed to item  
order transferring case to the Board  
tember 27, 1950, together with affidavit of  
d United States Post Office return re-  
eef.

spondents' exceptions to the Intermediate  
ceived October 17, 1950.

py of Decision and Order issued by the  
Labor Relations Board on January 30,  
Intermediate Report annexed, together  
avit of service and United States Post  
rn receipts thereof.

mony Whereof, the Executive Secretary  
ional Labor Relations Board, being there-

Relations Board in the city of Washington  
of Columbia, this 22nd day of June, 1951

/s/ FRANK M. KLEILER

Executive Secretary

[Seal]

NATIONAL LABOR  
RELATIONS BOARD

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[Endorsed]: No. 12994. United States  
Appeals for the Ninth Circuit. National  
Labor Relations Board, Petitioner, vs. Robert S.  
Rayburn B. Guerin and Ed R. Guerin, In  
and as Co-Partners, Doing Business as R.  
& Company, General Contractors, Re  
Transcript of Record. Petition for Enforcement  
Order of the National Labor Relations Board

Filed June 27, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals  
Ninth Circuit.



## ON FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

National Labor Relations Board pursuant to  
National Labor Relations Act, as amended (61  
29 U.S.C., Supp. III, Secs, 151 et seq.),  
here called the Act, respectfully petitions  
for the enforcement of its order against  
respondents, Robert S. Guerin, Rayburn B. Guerin  
and B. Guerin, individually and as co-partners,  
B. Guerin & Company, General Contractors,  
San Francisco, California, their agents  
and attorneys. The proceeding resulting in said order  
is upon the records of the Board as "In  
re Robert S. Guerin, Rayburn B. Guerin  
and B. Guerin, individually and as co-partners,  
B. Guerin & Company, General Contractors,  
Dick W. Spicher, an individual, Case No.  
100."

By virtue of this petition the Board respectfully

respondents are engaged in business in the  
State of California, within this judicial circuit  
whereby unfair labor practices occurred. This

(2) Upon all proceedings had in sa before the Board as more fully shown by record thereof certified by the Board and this Court herein, to which reference made, the Board on January 30, 1951, d its findings of fact and conclusions of issued an order directed to the Respond agents and assigns. The aforesaid order as follows:

### ORDER<sup>5</sup>

Upon the entire record in the case and to Section 10 (c) of the National Labor Act, the National Labor Relations Board orders that the Respondents, Robert S Rayburn B. Guerin and Ed R. Guerin, in and as co-partners, d/b/a R. B. Guerin & General Contractors, South San Francisco, their agents and assigns shall:

1. Cease and desist from:

(a) Encouraging membership in Engineers Local Union No. 3 of the tional Union of Operating Engineers, other labor organization of their emp discharging any of their employees o inating in any other manner in regar hire or tenure or employment or an condition of their employment;

(b) In any other manner interfere

aining, or coercing their employees in the  
ise of the right to self-organization, to  
join, or assist labor organizations, to  
ain collectively through representatives of  
own choosing, to engage in concerted ac-  
es for the purpose of collective bargaining  
her mutual aid or protection, or to re-  
from any or all of such activities, ex-  
to the extent that such right may be af-  
d by an agreement requiring membership  
labor organization as a condition of em-  
ment, as authorized in Section 8 (a) (3)  
e Act.

ke the following affirmative action, which  
d finds will effectuate the policies of the

Make whole Dick W. Spicher, in the  
er set forth in the section of the Inter-  
ate Report entitled "The remedy," for  
oss of pay he may have suffered as a re-  
of the Respondents' discrimination against

Upon request, make available to the  
onal Labor Relations Board, or its agents,  
examination and copying, all pay roll rec-  
social security payment records, time  
, personnel records and reports, and all  
records necessary to an analysis of the  
nt of back pay due under the terms of

Cedarville, Meade County, California,  
any other projects presently operated  
copies of the notice attached to the I  
ate Report and marked Appendix A  
of said notice, to be furnished by the  
Director for the Twentieth Region, s  
being duly signed by the Responder  
sentative, be posted by the Responde  
diately upon receipt thereof and main  
them for sixty (60) consecutive da  
after, in conspicuous places, incl  
places where notices to employees ar  
arily posted. Reasonable steps shall  
by the Respondents to insure that sa  
are not altered, defaced, or covere  
other material;

(d) Notify the Regional Director  
Twentieth Region, in writing, within  
days from the date of this Order, v  
the Respondents have taken to com  
with.

(3) On January 30, 1951, the Board's  
and Order was served upon Respondent b  
copies thereof postpaid, bearing Governm  
by registered mail, to Respondents' couns

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<sup>6</sup>This notice, however, shall be, and it  
amended by striking from line 3 thereof t  
"The Recommendations of a Trial Exami  
substituting in lieu thereof the words, "A  
and Order." In the event that this Or

rsuant to Section 10 (e) of the National  
lations Act, as amended, the Board is  
and filing with this Court a transcript  
tire record of the proceeding before the  
cluding the pleadings, testimony and evi-  
dings of fact, conclusions of law, and  
he Board.

ore, the Board prays this Honorable Court  
use notice of the filing of this petition  
cript to be served upon Respondent and  
Court take jurisdiction of the proceeding  
e questions determined therein and make  
upon the pleadings, testimony and evi-  
d the proceedings set forth in the tran-  
d upon the order made thereupon as set  
paragraph (2) hereof, a decree enforcing  
said order of the Board, and requiring  
nts, their agents and assigns to comply

**NATIONAL LABOR  
RELATIONS BOARD,**

By /s/ A. NORMAN SOMERS,  
Assistant General Counsel.

at Washington, D. C., June 22, 1951.

**Appendix A**

**NOTICE TO ALL EMPLOYEES**

Relations Act, we hereby notify our empl

We Will Not encourage members  
erating Engineers Local Union No  
International Union of Operating  
or in any other labor organization o  
ployees, by discriminatorily discharg  
our employees or by discriminatin  
other manner in regard to their hire  
of employment or any term or co  
employment.

We Will Not in any other manner  
with, restrain, or coerce our employ  
exercise of their right to self organ  
form, join, or assist labor organiz  
bargain collectively through represen  
their own choosing, to engage in other  
activities for the purposes of colle  
gaining or other mutual aid or prote  
to refrain from any or all of such  
except to the extent that such righ  
affected by an agreement requiring  
ship in a labor organization as a co  
employment, as authorized in Section  
of the Act.

We Will Make Whole Dick W. S  
any loss of pay suffered by him as a  
our discrimination against him at o  
at Cedarville, Modoc County, Califor

All our employees are free to become



on. We will not discriminate in regard to  
r tenure of employment or any term or  
of employment against any employee be-  
is membership or nonmembership in any  
nization.

R. B. GUERIN & COMPANY,  
Employer.

.....

By .....,  
Representative.

Title

ice must remain posted for 60 days from  
ereof, and must not be altered, defaced,  
by any other material.

ed]: Filed June 27, 1951.

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court of Appeals and Cause.]

## STATEMENT OF POINTS RELIED UPON BY PETITIONER

onorable, the Judges of the United States  
of Appeals for the Ninth Circuit:  
National Labor Relations Board, Petitioner  
plying with Rule 19 (6) of the Rules of  
, files the following statement of points  
h it intends to rely in the above-entitled



## Statement of Points

1. The Board properly asserted jurisdiction over the unfair labor practices involved herein.
2. The Board's findings are supported by substantial evidence on the record considered.
3. The Board's order is valid and proper.

Dated at Washington, D. C., this 22nd  
June, 1951.

/s/ A. NORMAN SOMERS  
Assistant General Counsel

NATIONAL LABOR  
RELATIONS BOARD

[Endorsed]: Filed June 27, 1951.

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[Title of Court of Appeals and Cause.]

## ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America

To Robert S. Guerin, Rayburn B. Guerin

R. Guerin, individually and as co-defendant

d/b/a R. B. Guerin & Co., General Contractor

P. O. Box 201, South San Francisco, California

Associated General Contractors of America

Union of Operating Engineers, 1095 Mar-  
., San Francisco, California

t to the provisions of Subdivision (e)  
160, U. S. C. A. Title 29 (National Labor  
Board Act, Section 10(e) ), you and each  
hereby notified that on the 27th day of  
, a petition of the National Labor Re-  
ard for enforcement of its order entered  
y 30, 1951, in a proceeding known upon  
s of the said Board as

the Matter of Robert S. Guerin, Ray-  
B. Guerin and Ed R. Guerin, individually  
s co-partners, doing business as R. B.  
n & Company, General Contractors, and  
W. Spicher, an individual, Case No.  
-274,"

entry of a decree by the United States  
Appeals for the Ninth Circuit, was filed  
United States Court of Appeals for the  
cuit, copy of which said petition is at-  
eto.

also notified to appear and move upon,  
plead to said petition within ten days  
of the service hereof, or in default of  
the said Court of Appeals for the Ninth  
l enter such decree as it deems just and  
the premises.

in the year of our Lord one thousand, nine  
and fifty-one.

[Seal]      /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals  
the Ninth Circuit.

Returns on service of writ attached.

[Endorsed]: Filed July 10, 1951.